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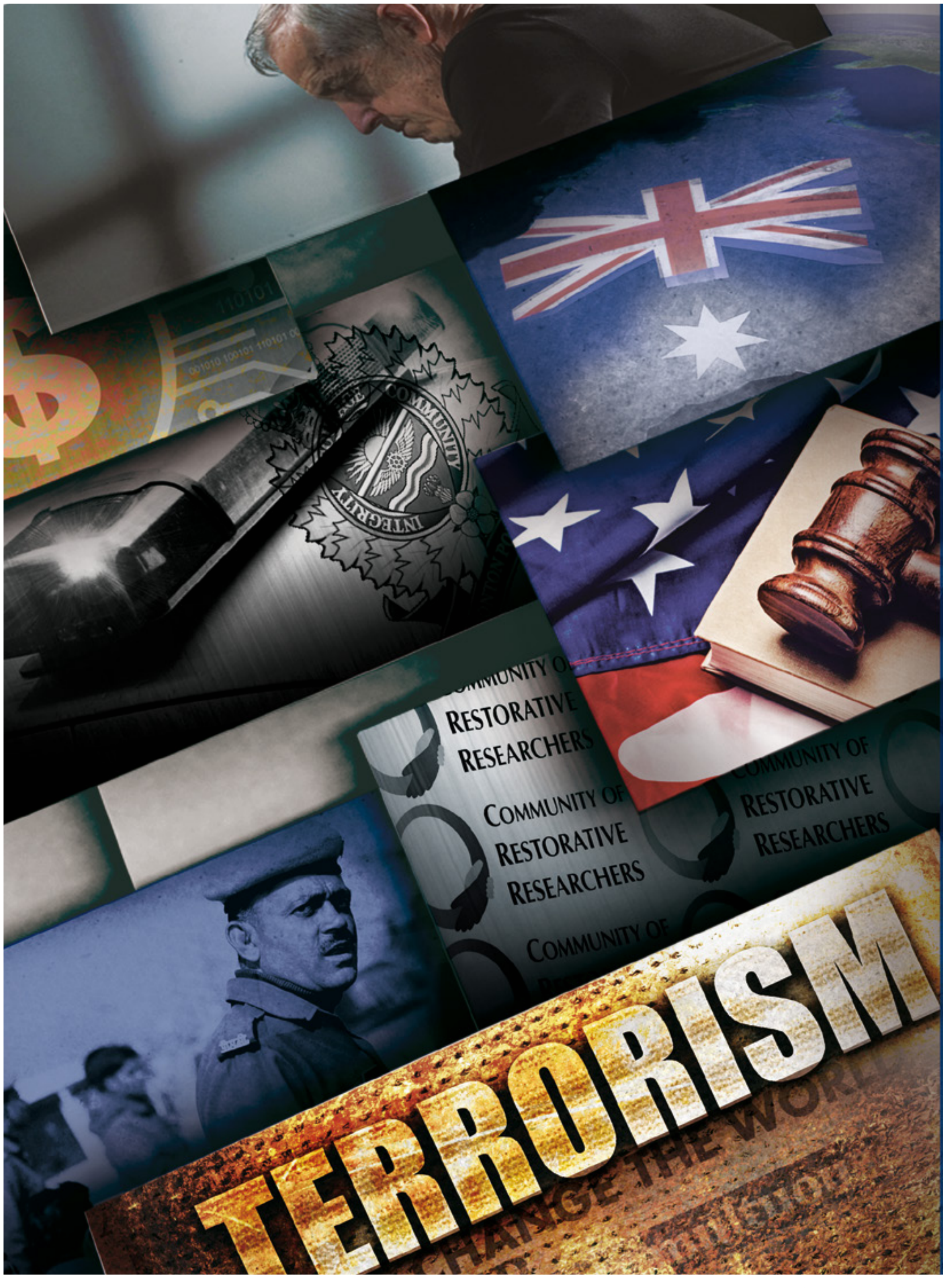
COMMUNITY OF RESTORATIVE RESEARCHERS
INTEGRITY
COMMUNITY
TERRORISM
CHANGE THE WORLD

INSIDE // DANS CE NUMÉRO

DON'T FORGET! // N'OUBLIEZ PAS!

CCJA CONGRESS // CONGRÈS ACJP 2017

AND // ET

PERSONNES ÂGÉES JUDICIARISÉES

RECESSION AND CRIME

COMMUNITY OF RESTORATIVE RESEARCHERS

CCJA NOTICES // AVIS ACJP

CALL FOR NOMINATIONS : CCJA AWARDS // APPEL DE CANDIDATURES : PRIX ACJP

SPECIAL INTERNATIONAL ISSUE ON TERRORISM

NUMÉRO SPÉCIAL INTERNATIONAL SUR LE TERRORISME

GUEST EDITOR
// SOUS LA DIRECTION DU RÉDACTEUR INVITÉ
JOHN WINTERDYK

CONT'D FROM 31.4 // SUITE DU 31.4

CANADIAN CRIMINAL JUSTICE ASSOCIATION •• ASSOCIATION CANADIENNE DE JUSTICE PÉNALE

JUSTICE
ACTUALITÉS REPORT

Volume 32 No. / N° 1

The **JUSTICE REPORT** contains information of value to Association readers and the public interested in matters related to the administration of justice in Canada. Opinions expressed in this publication do not necessarily reflect the Association's views, but are included to encourage reflection and action on the criminal justice system throughout Canada. For more information on the activities of the CCJA, please contact: •• L'**ACTUALITÉS-JUSTICE** renferme des renseignements utiles aux lecteurs de l'Association et au public qui s'intéressent aux questions relatives à l'administration de la justice au Canada. Les opinions qui sont exprimées ne reflètent pas nécessairement les vues de l'Association, mais y figurent afin d'encourager à réfléchir et à agir sur la justice pénale dans tout le Canada. Pour obtenir de plus amples renseignements sur les activités de l'Association, veuillez communiquer avec :

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A NEW YEAR, A TIME TO REKINDLE HOPE, A TIME TO FACE NEW CHALLENGES

EDITORIAL

BY IRVING KULIK
CCJA Executive Director

As we journey into a new year we usually think of new beginnings, new resolutions and perhaps great aspirations. In reality, of course, little changes as the clock strikes midnight on December 31, in spite of the champagne bubbles and celebrations. As the months roll by, yesterday's challenges remain to be addressed today and over the coming months. Other challenges will be added as a result of the recent US elections. Not long ago "hope and change" was on display for our neighbours south of the border. While many may carry high hopes going forward, we in Canada need to be paying attention to our neighbours and the many, many changes in the wake of January 20. We will also be impacted.

One of the earliest lessons to learn from the election results was the shock experienced by all the experts and pollsters. Of course if you only talk to those who share your views, you confirm only your own perspectives. Let us not forget that no monopoly on ideas exists in a democracy. As we promote effective criminal justice policies, we need to also make room for diverse opinions.

We pride ourselves on our values, our independent thinking and our Canadian way of life. We would fool ourselves, however, not to carefully watch developments in the US. The USA is our closest neighbour, largest trading partner and, even with its role diminished, is still the leader of the free world. So what can we expect in our world from the new administration in Washington? No one can yet predict all that may arrive, but a few matters easily come to mind.

CCJA has often presented briefs that challenge the need for more 'tough on crime' legislation which in our view accomplishes little in terms of public safety while increasing the costs, in economic and human terms, of growing incarceration. The US President-elect has recently criticized the release of thousands of detainees over the last while. Given his emphasis on security and terrorism we may expect the US incarcerated population to rise again after years of some decline. This should not impact us directly or immediately, but we will feel the influence. There is always an effect on Canada when the US spawns new trends. It will take time, but it may come here as well. The old adage "When the US has a cold, Canada coughs" remains a truism. How long will it be until we return to 'tough on crime'?

Terrorism, of course, is an international problem and as the US tightens controls and borders we may have to do the same. Too much of our trade and indeed our economy is dependent on cross-border traffic. We have recently provided input into our government's National Security Consultation process which came as a follow-up to the Harper Government's C-51 legislation. We have been impatient with the time it has taken for some modifications to be legislated. Now, however, it is inconceivable that Canada will not keep an eye on developments by President Trump's administration before presenting any new legislation in this area.

Canada prides itself on its openness to immigrants. While Canada has welcomed more than 38 000 Syrian immigrants, the US - with a population ten times the size - received only about 10 000. Notwithstanding, the criticism there has been unwavering and was a major issue in the presidential campaign. A more restrictive US immigration policy may well have an impact on us, for example on travel restrictions, although to what extent is hard to foresee.

The direction of the US Supreme Court will be changing quickly with the selection of the 9th justice and even more as retiring judges are replaced over the midterm. A large number of vacancies on federal benches need to be filled as well. Clearly new nominees to US courts will be chosen for their avowed conservative views. Will their decisions have a direct impact on Canadian jurisprudence? Probably not; however, they may affect us in other areas of our tight relationship, particularly commerce.

While these thoughts may be somewhat depressing rather than hopeful, the reality is that we do not yet know how things will unfold over time. There is much more to the management of an enterprise as large as a democratic government than the ideology of its leader. I maintain hope that we and our values will also have some positive influence on the US and temper many of the ideological themes espoused during a very divisive and unusual election campaign.

Hoping and wishing you all a peaceful new year.

Irving Kulik

UNE NOUVELLE ANNÉE : UNE OCCASION DE RAVIVER L'ESPOIR ET DE RELEVER DE NOUVEAUX DÉFIS

ÉDITORIAL

PAR IRVING KULIK
Directeur général de l'ACJP

L'arrivée d'une nouvelle année nous amène habituellement à penser à de nouveaux départs, de nouvelles résolutions et, peut-être, à de grandes aspirations. Dans les faits, peu de choses changent lorsque sonne minuit le 31 décembre, en dépit des bulles et des célébrations. À mesure que l'année défile, il nous faut encore relever les défis d'hier, aujourd'hui et au cours des mois à venir. Le résultat de la récente élection américaine entraînera de nouveaux défis. Il n'y a pas si longtemps, nos voisins du Sud pouvaient encore parler d'espoir et de changement. Bien qu'un bon nombre puisse encore caresser de grands espoirs, nous, les Canadiens, devons porter attention à nos voisins et aux très nombreux changements qui surviendront dans la foulée du 20 janvier. Nous aussi serons affectés.

L'une des premières leçons qui se dégagent des résultats de l'élection, c'est l'état de choc dans lequel ont été plongés tous les experts et les sondeurs d'opinion. Bien sûr, si vous ne parlez qu'à ceux qui partagent vos vues, vous ne faites que confirmer les vôtres. Il faut se rappeler qu'il n'existe aucun monopole des idées au sein d'une démocratie. Ainsi, alors que nous faisons la promotion de politiques de justice pénale efficaces, il nous faut aussi laisser place à une diversité d'opinions.

Nous sommes fiers de nos valeurs, de notre liberté de penser et de notre mode de vie canadien. Nous serions dupes cependant, si nous ne portions pas attention aux développements qui se produisent aux États-Unis. Ce sont nos plus proches voisins, notre plus grand partenaire commercial et, même si leur rôle a perdu de l'importance, ils demeurent les leaders du monde libre. Par conséquent, à quoi notre monde devrait-il s'attendre de la nouvelle administration de Washington? Personne ne peut encore prédire tout ce qui pourrait se passer, mais certains enjeux viennent tout de suite à l'esprit.

L'ACJP a maintes fois présenté des mémoires remettant en question la nécessité d'adopter des lois plus répressives, ce qui, à notre avis, contribue très peu à améliorer la sécurité publique tout en contribuant à une majoration des coûts économiques et sociaux d'une incarcération croissante.

Le président désigné des États-Unis a récemment dénoncé la remise en liberté de milliers de détenus ces derniers temps. Compte tenu de l'accent qu'il met sur la sécurité et le terrorisme, nous pourrions nous attendre à ce que la population carcérale américaine augmente encore une fois après avoir connu un certain déclin au cours des dernières années. Ce phénomène ne devrait pas avoir d'incidences directes ou immédiates sur nous, mais son influence se fera sentir. Les nouvelles tendances qui naissent aux États-Unis ont toujours des retombées chez nous. C'est presque une vérité de La Palice de dire : « Quand les États-Unis ont le rhume, le Canada tousse. » Combien faudra-t-il de temps avant que nous revenions à une approche répressive de la criminalité?

Le terrorisme est certes un problème international et, si les États-Unis resserrent leurs contrôles et leurs frontières, il se pourrait que nous ayons à faire de même. Une trop grande part de nos échanges commerciaux et de ce fait, de notre économie, dépend de la circulation transfrontalière des biens. Nous avons récemment participé au processus de consultation de notre gouvernement sur le sujet de la sécurité nationale, comme suite au projet de loi C-51 du gouvernement Harper. Le temps qu'il a fallu pour apporter certains changements à la loi a mis notre patience à l'épreuve. Il est toutefois inconcevable aujourd'hui que le Canada propose de nouvelles lois en cette matière, sans d'abord tenir compte des développements découlant de l'administration du président Trump.

Le Canada s'enorgueillit de son ouverture envers les immigrants. Bien que le Canada ait accueilli plus de 38 000 immigrants syriens, les États-Unis n'en ont accueilli que 10 000, alors que leur population est dix fois supérieure à la nôtre. En dépit de cela, la critique chez nos voisins n'a pas cessé et s'est avérée un enjeu majeur de la campagne présidentielle. Une politique d'immigration plus restrictive pourrait très bien avoir des incidences sur nous, notamment sur les restrictions applicables aux voyages, bien qu'il soit difficile de prévoir dans quelle mesure.

Les orientations de la Cour suprême des États-Unis vont changer rapidement avec la nomination du 9e juge, et encore davantage alors que seront remplacés les juges qui prendront leur retraite à moyen terme. Un grand nombre de postes sont également à pourvoir dans les tribunaux fédéraux. Manifestement les juges nommés aux tribunaux américains auront été choisis d'abord et avant tout pour leurs vues conservatrices affirmées. Leurs décisions auront-elles des incidences directes sur la jurisprudence canadienne? C'est peu probable – elles pourraient toutefois affecter d'autres secteurs de nos relations, notamment le commerce entre nos deux pays.

Bien que ces pensées soient plutôt déprimantes que porteuses d'espoir, le fait est que nous ne savons pas encore comment les choses se passeront avec le temps. La gestion d'une entreprise aussi vaste qu'un gouvernement démocratique dépend de beaucoup plus que l'idéologie du chef d'État. Je continue d'espérer que nous et nos valeurs exercerons une influence positive sur les États-Unis et contribuerons à tempérer bon nombre des thèmes idéologiques adoptés au cours d'une campagne électorale insolite et source de discorde.

Je souhaite à tous une nouvelle année marquée de paix.

Irving Kulik

NOTICES CCJA
AVIS ACJP

The CCJA congratulates CHELSEA G. PORTER

as the recipient of a Mount Royal University scholarship, the benefits of which include CCJA membership and publication of Ms. Porter's article entitled “Rehabilitation of Criminals: Is it worth it?” – in No. 32.2 (Spring, 2017) of the *Justice Report*.

L'ACJP tient à féliciter CHELSEA G. PORTER,

lauréate de la bourse d'études de Mount Royal University ; les avantages de cette bourse incluent une adhésion à l'ACJP et la publication de l’article de Mme. Porter, « Rehabilitation of Criminals: Is it worth it? » dans le numéro 32.2 (printemps 2017) d'*Actualités-Justice.*

GENEVIÈVE BOUCHER BOUDREAU,
CCJA Executive Assistant and Project Coordinator

As of November 1, 2017 the responsibilities of Geneviève B Boudreau (CCJA Executive Assistant) were expanded to make her CCJA Project Coordinator. Boudreau’s new responsibilities include the coordination of new projects, such as pan-national workshops and conferences, with the CCJA affiliates. Boudreau will also work with the affiliates on new initiatives focused on expanding their dialogue with the CCJA national office.

Biographical Note

Geneviève Boucher Boudreau is a PhD candidate in the Department of Sociology at the University of Ottawa. Her research focuses on the concepts of violence, national identity, radicalization and religion. She holds an M.A. in Anthropology (Université Laval), an M.A. in Conflict Resolution and Mediation (Tel Aviv University) and was an intern consultant for the International Institute for Counter-Terrorism in Israel. After a decade of academic work and fieldwork based in the Middle East, Geneviève’s current research adopts an ethnographic approach that will generate knowledge about communications between Muslim groups in order to develop alternative counterterrorism strategies. Geneviève’s professional experiences have also allowed her to develop skills in media analysis, policy decision-making, international mediation, and leadership.

GENEVIÈVE BOUCHER BOUDREAU,
Adjointe exécutive l'ACJP et Coordonatrice de projet

À compter du 1er novembre 2017, Geneviève B. Boudreau (adjointe exécutive à l'ACJP) verra ses responsabilités élargies à celles de coordonnatrice de projet de l'ACJP. Ses nouvelles responsabilités comprendront la coordination de nouveaux projets, tels que des ateliers et des conférences nationales impliquant les affiliées de l'ACJP. Elle collaborera également avec les affiliées à la réalisation de nouvelles initiatives destinées à susciter un dialogue plus profond avec le bureau national de l'ACJP.

Notes biographiques

Geneviève Boucher Boudreau est doctorante au département de sociologie de l'Université d'Ottawa. Ses recherches mettent l'accent sur les notions de violence, d'identité nationale, de radicalisation et de religion. Elle est titulaire d'une maîtrise en anthropologie (Université Laval) ainsi que d'une maîtrise en résolution de conflits et en médiation (Université de Tel Aviv); elle a aussi été une stagiaire consultante pour le compte de l’International Institute for Counter-Terrorism en Israel. Après une décennie d'études universitaires et de stages au Moyen-Orient, Geneviève adopte aujourd'hui une approche ethnographique qui permettra de générer des connaissances au sujet de divers groupes musulmans dans le but de mettre au point des stratégies de rechange en matière de lutte contre le terrorisme. Ses expériences professionnelles lui ont aussi permis de développer des compétences en analyse des médias, en prise de décisions en matière de politiques, en médiation internationale et en leadership.

CONGRATULATIONS TO EMMA KELLY, recipient of the CCJA’s student award!

Emma Kelly is a third year student at the University of Guelph-Humber, working towards her Bachelor of Applied Science in Justice Studies and diploma in Community Justice Services. Her passion for learning has led to work and volunteer experience in many justice-related positions. She is currently a volunteer with Innocence Canada (formerly the Association in Defence of the Wrongly Convicted), which has opened her eyes to the shortcomings of the justice system and driven her to address them in future work. Emma has also volunteered with Pride Toronto and Amnesty International. Her interest in justice has led to work experience with Guelph-Wellington Women in Crisis in Public Education and the City of Brampton’s Property Standards enforcement division as an inspector. Emma has also been active on campus in societies, teams, committees and governance. She currently sits on her student government’s Board of Directors. She is extremely grateful to be a recipient of the CCJA Student Award and will use it to further her work in the justice field.

NOS FÉLICITATRIONS À EMMA KELLY, lauréate du prix étudiant de l'ACJP

Emma Kelly est à compléter sa troisième année d'études en vue de l'obtention d'un baccalauréat en sciences appliquées et en études de justice ainsi que d'un diplôme en services de justice communautaires. Sa soif d'apprendre l'a amenée à travailler et à œuvrer comme bénévole à divers postes liés à la justice. Elle œuvre actuellement comme bénévole auprès d'Innocence Canada (autrefois : l'Association pour la défense des personnes injustement condamnées), ce qui lui a ouvert les yeux sur les lacunes du système de justice et l'a amenée à s'y attaquer dans sa prochaine carrière. Elle a également œuvré comme bénévole auprès de Pride Toronto [Fierté Toronto] et d'Amnistie internationale. Son intérêt pour la justice l'a aussi amenée à acquérir une expérience de travail en éducation du public avec Guelph-Wellington Women in Crisis ainsi que qu'à titre d'inspecteur des normes du bâtiment pour le compte de la Ville de Brampton. Emma s'est également investie activement dans multiples sociétés, équipes, comités et dans la gouvernance du campus. Elle siège actuellement au conseil d'administration de son conseil étudiant. Elle est extrêmement reconnaissante de s'être vu décerner le Prix étudiant de l'ACJP et entend le mettre à contribution pour l'avancement de son travail dans le domaine de la justice.

2017

CANADIAN CRIMINAL JUSTICE ASSOCIATION AWARDS ACKNOWLEDGING EXCELLENCE

PRIX D'EXCELLENCE DE L'ASSOCIATION CANADIENNE DE JUSTICE PÉNALE

CALL FOR NOMINATIONS FOR THE FOLLOWING AWARDS:
APPEL DE CANDIDATURES POUR LES PRIX SUIVANTS :

Willie-Gibbs Lifetime Achievement Award
Prix Willie Gibbs pour l'ensemble des réalisations

Certificate of Appreciation I Certificat d'appréciation

Crime Prevention Award I Prix de prévention du crime

Public Education Award I Prix d'éducation du public

Research Award I Prix de recherche

Restoration Award I Prix de la réconciliation

The Senator Earl A. Hastings Award I Prix Sénateur Earl A. Hastings

DESCRIPTIONS OF AWARDS

➡

DESCRIPTIONS DES PRIX

Please send your nominations, replete with support letters, by email: ccja-acjp@rogers.com
or by postal mail: CCJA/ACJP Att: Geneviève Bouchard Boudreau I 101-320, av. Parkdale Ave., Ottawa (ON) K1Y 4X9

Veuillez effectuer vos mises en candidature, accompagnées de lettres d'appui, par courriel : ccja-acjp@rogers.com
ou par la poste : CCJA/ACJP Att: Geneviève Bouchard Boudreau I 101-320, av. Parkdale Ave., Ottawa (ON) K1Y 4X9

DEADLINE: July 17, 2017 DATE LIMITE : 17 juillet 2017

WILLIE-GIBBS
LIFETIME ACHIEVEMENT
AWARD
★ ★ ★ ★
LE PRIX WILLIE GIBBS
POUR L'ENSEMBLE
DES RÉALISATIONS

THE WILLIE-GIBBS LIFETIME ACHIEVEMENT AWARD recognizes people who have distinguished themselves by their contribution to the improvement of the Criminal Justice System in Canada and to the achievement of the objectives of the CCJA.

LE PRIX WILLIE GIBBS POUR L'ENSEMBLE DES RÉALISATIONS permettra de reconnaître les personnes qui se sont illustrées par leur contribution à l'amélioration du système de justice pénale au Canada et à l'atteinte des objectifs de l'ACJP.

CERTIFICATE OF
APPRECIATION
★ ★ ★ ★
CERTIFICAT
D'APPRÉCIATION

THE CERTIFICATE OF APPRECIATION may be presented to individuals who have made a significant contribution to the CCJA. There is no requirement to be a member of the CCJA in order to receive this Award.

LE CERTIFICAT D'APPRÉCIATION pourra être remis à toute personne qui a contribué de manière exceptionnelle au travail et aux objectifs de l'ACJP. Il n'est pas requis que cette personne soit membre de l'Association pour être admissible à ce prix.

CRIME PREVENTION
AWARD
★ ★ ★ ★
PRIX DE PRÉVENTION
DU CRIME

THE CRIME PREVENTION AWARD recognizes individuals or organizations in Canada who have made a significant contribution to the reduction of criminal behaviour and to the protection of the public.

LE PRIX DE LA PRÉVENTION DU CRIME sera remis en vue de reconnaître une personne ou un organisme qui s'est illustré en contribuant de manière importante à une réduction des comportements criminels et à la protection du public.

PUBLIC EDUCATION
AWARD
★ ★ ★ ★
PRIX D'ÉDUCATION
DU PUBLIC

THE PUBLIC EDUCATION AWARD recognizes work by professional journalists and other persons who significantly advance public understanding in Canada of the need for, and elements of, a humane, effective criminal justice system.

LE PRIX D'ÉDUCATION DU PUBLIC vise à reconnaître le travail de journalistes professionnels et d'autres personnes qui contribuent à une meilleure compréhension des Canadiens et des Canadiennes du besoin qu'on a et des composantes d'un système de justice humain et efficace.

RESEARCH
AWARD
★ ★ ★ ★
PRIX
DE RECHERCHE

THE RESEARCH AWARD may be granted to recognize an individual or group who completed valid and reliable research that resulted in substantial improvement to the operations of the criminal justice system.

LE PRIX DE RECHERCHE sera remis en vue de reconnaître une personne ou un groupe de personnes ayant effectué des études valides et fiables et qui ont donné lieu à des améliorations importantes dans le fonctionnement du système de justice pénale.

RESTORATION
AWARD
★ ★ ★ ★
PRIX DE LA
RÉCONCILIATION

THE RESTORATION AWARD may be granted to victims or former offenders who have overcome the challenge of their past and made an exemplary contribution towards rehabilitation, restoration and a more humane and effective justice system.

LE PRIX DE LA RÉCONCILIATION peut être décerné à une victime ou à un ex-délinquant qui est parvenu à évacuer les difficultés de son passé et qui a contribué de manière exemplaire au processus de réhabilitation ou de réconciliation ainsi qu'à la réalisation d'un système de justice plus humain et plus efficace.

THE SENATOR
EARL A. HASTINGS
AWARD
★ ★ ★ ★
PRIX SÉNATEUR
EARL A. HASTINGS

To commemorate the contribution of the late **SENATOR EARL HASTINGS** to the Canadian criminal justice system and the CCJA, this Award honours Canadians who, although they do not work in the criminal justice system, have made an outstanding contribution over many years to the Canadian criminal justice system.

Créé dans le but de commémorer la contribution de feu le **SÉNATEUR EARL HASTINGS** au système de justice pénale et à l'ACJP, ce Prix veut honorer des Canadiens et des Canadiennes qui, même s'ils n'oeuvrent pas dans le domaine de la justice pénale, y ont tout de même contribué de manière exceptionnelle sur plusieurs années.

Corporation Maison Cross Roads • Service Oxygène

INTRODUCTION AU PHÉNOMÈNE DU VIEILLISSEMENT DES PERSONNES ÂGÉES JUDICIARISÉES AU SEIN DU RÉSEAU CORRECTIONNEL CANADIEN…

- SUMMARY -

This series of articles propose a workable balance between preserving the dignity of elderly inmates (50+), criminogenic issues, and the limits of the criminal justice network's human and financial resources and prison structures. In the first three articles, Michel Gagnon and Michel Dunn propose an intervention and discharge planning model to address the needs of elderly inmates and parolees.

To this end, Michel Gagnon and co-author Michel Dunn present a geronto-criminological intervention model designed to support a range of activities that are intended to speed-up 'cascading' and the eventual release of elderly individuals into the community. The authors have created a Manual, supported by a Toolbox (instructions to the facilitators, pretests and posttests, homework exercises, testimonies, self-evaluation exercises, etc.) to help facilitators assist elderly inmates and parolees in learning to better care for their mental and physical health, deal with the past, and approach old age with hope and dignity. While similar services for elderly offenders exist in certain penitentiaries, Gagnon and Dunn call for a unified implementation across the federal correctional system.

In the fourth article, Patricia Staniak (Coordinator of Service Oxygène) reports on a discharge planning initiative directed at elderly inmates and parolees by presenting the profiles of four elderly parolees facing various issues, including poor nutrition, unhealthy lifestyles and unresolved trauma from victimization prior to offending and/or while in prison. The final article, by Claire Guenat, lists the array of issues - major health problems, physical disability, fragile mental health, low income, lack of social skills, little or no work experience, unfamiliarity with technology, isolation, and lack of family/friends – taken into account by Service Oxygène. To this end, she presents the findings of a study carried out among 20 elderly offenders (50+) that show how re-entry often means starting over from zero, that interventions proposed by Service Oxygene can help make the difference, and that satellite apartments are often the last resort to homelessness.••

Explosion du nombre de personnes âgées incarcérées

PAR MICHEL GAGNON ET MICHEL DUNN

Au Canada, selon les données émises par l'enquêteur correctionnel du Canada (ECC), le nombre de détenus âgés de 50 ans et plus a doublé entre les années 2003 et 2013 (ECC 2014). Plus précisément, les détenus âgés représentaient 12% de la population carcérale en 2000, 15% en 2010 et presque 25% en 2015 (ECC 2015). Si on considère qu'un détenu sur quatre – environ 3200 personnes – purge actuellement une peine à perpétuité et qu'ils auront atteint le statut de personnes âgées avant même d'être admissible à une libération conditionnelle, il est clair que la cohorte des cheveux gris continuera d'augmenter de façon exponentielle à l'intérieur des pénitenciers canadiens au cours des prochaines années.

Pourquoi 50 ans? Vieillissement accéléré et décès prématuré!

La littérature internationale sur le sujet nous apprend que le processus de vieillissement chez les détenus du Canada, des États-Unis, de l'Europe et de l'Australie se déclenche au moins dix ans plus rapidement que parmi la population en général, amenant dans son sillage son lot de maladies chroniques (hypertension, diabète, démences, maladies cardio-vasculaires, etc.) et de décès prématurés. Dans le même sens, une étude canadienne parue en 2013 nous apprenait que la moyenne d'âge de cinquante des détenus décédés de mort naturelle à l'intérieur des murs était de 60 ans (ECC 2014)! Considérant que l'espérance de vie des Canadiens tourne autour de 78 ans pour les hommes et de 83 ans pour les femmes, il y a là matière à questionnement et l'on pourrait penser qu'une peine d'emprisonnement dans un pénitencier est synonyme d'une espérance de vie réduite. Si ce processus de vieillissement accéléré menant trop souvent au décès prématuré constitue un effet extrêmement pervers de l'emprisonnement, tout porte à croire qu'il n'est cependant pas souhaité par le système carcéral qui, plutôt dépassé par le phénomène de l'augmentation exponentielle des personnes âgées incarcérées, peine à trouver des solutions sur deux enjeux extrêmement importants :

- Son obligation légale de préserver la vie pendant l'incarcération
- L'augmentation fulgurante des coûts reliés aux soins de santé pour les personnes âgées incarcérées.

Quelles sont les causes de ce vieillissement accéléré?

Sans avoir la prétention de présenter la totalité des causes reliées au vieillissement accélérée dans les pénitenciers, on peut néanmoins discerner deux tendances principales :

1. Les examens médicaux des nouveaux arrivants nous apprennent qu'ils sont déjà nombreux à présenter des conditions de santé précaires en lien avec leur mode de vie marginal et leurs habitudes de vie malsaines précédant leur arrivée en pénitencier : tabagisme, drogue, absence de soins médicaux, mauvaise alimentation, etc.

2. La vie en prison leur est nuisible : diète alimentaire mal équilibrée, manque d'exercice, prévalence de certaines maladies infectieuses, diverses formes de stress liés à la vie en prison comme la peur d'être « victimisé » et de mourir en prison, le stress associé au fait que plusieurs de ces personnes ont elles-mêmes été victimes de sévices pendant leur enfance.

Y a-t-il quelque chose à faire pour améliorer la santé physique et mentale des prisonniers?

S'il est impossible d'agir sur les situations nocives qui ont précédé l'incarcération, il est certainement possible et souhaitable de le faire à partir de leur admission en pénitencier. Dans bien des cas, la prison constitue la première opportunité de mettre en place une démarche structurée visant à améliorer la santé physique et mentale des prisonniers. N'est-ce pas là, outre la mission de protection de la société, l'un des impératifs du Service correctionnel canadien? Mais surtout, n'est-ce pas là le meilleur, sinon le seul moyen de contrecarrer le vieillissement et le décès prématuré des personnes âgées incarcérées, sans oublier les enjeux et défis liés à la perte de mobilité et les enjeux liés à la fin de vie? D'autant plus que toute mesure visant à retarder le vieillissement des personnes incarcérées aurait un impact positif majeur sur l'augmentation hors de contrôle des coûts reliés aux soins de santé destinés aux détenus de 50 ans et plus.••

L'intervention géronto-criminologique

PAR MICHEL GAGNON ET MICHEL DUNN

MAINTIEN DES HABILETÉS COGNITIVES
OCCUPATIONS VALORISANTES
ACTIVITÉ PHYSIQUE

Trouver le juste équilibre entre la préservation de la dignité des personnes âgées incarcérées, les enjeux criminogènes, les limites du réseau correctionnel lui-même (ressources monétaires, ressources humaines disponibles et formées pour aider ces personnes), ainsi que les limites structurelles des espaces pénitentiaires constitue le défi fondamental autour duquel devra s'articuler la stratégie correctionnelle requise pour affronter et régler définitivement le problème du vieillissement en prison.

Comment vieillir et retarder l'apparition des difficultés et défis liés au vieillissement ?

Nous savons déjà que les recherches et les études scientifiques contemporaines qui se sont donné comme mission de découvrir les meilleures façons de bien vieillir et de retarder l'apparition des difficultés et défis liés au vieillissement nous proposent les pratiques suivantes :

1. **Favoriser le maintien des habiletés cognitives**
2. **Offrir des occupations valorisantes aux personnes âgées**
3. **Favoriser l'activité physique**
4. **Promouvoir un régime alimentaire sain et adapté aux personnes vieillissantes**
5. **Trouver, développer et favoriser les activités sociales et les loisirs pour combattre l'isolement social**
6. **Développer le concept « Prendre soin de sa santé » (usage inapproprié de médicaments, d'alcool et de drogue, respecter ses limites, pas de tabac, visites régulières chez le médecin, etc.)**

Si ces pratiques contribuent au vieillissement réussi des personnes âgées dans la communauté, il n'y a donc aucune raison pour que ce soit différent parmi la population âgée incarcérée, à condition que nous réussissions à tenir compte des exigences et des restrictions inhérentes au système carcéral.

Service Oxygène de la corporation Maison Cross Roads est une initiative de planification de sortie axée sur un vieillissement…

C'est donc dans cette optique qu'un modèle d'intervention de vieillissement réussi à l'intérieur des murs et au moment du retour en communauté est mis de l'avant par une équipe de chercheurs du Service Oxygène de la corporation Maison Cross Roads. Ce projet, conçu en tenant compte des connaissances accumulées en gérontologie et en criminologie depuis plus de 10 ans par l'entremise des services offerts par le Service Oxygène (voir site web), d'où l'utilisation du vocable géronto-criminologie, présente le double avantage d'aider les personnes âgées incarcérées et/ou en processus de vieillissement à prendre soin de leur santé physique et mentale (gérontologie), tout en s'engageant positivement et activement dans le déroulement de leur plan correctionnel (criminologie). En effet, si les personnes âgées incarcérées reconnaissent et intègrent dans leur vie le concept du « bien vieillir », elles réussissent alors à mettre de côté les éléments négatifs de leur passé, et décident de se construire une vie nouvelle, et cela en fonction de leurs propres capacités et potentiel. Elles ne réagissent plus de façon contre-productive aux difficultés de la vie en pénitencier, elles reprennent la maîtrise de leur vie. Elles agissent aussi « dans leur propre vie » et apprennent à faire une meilleure lecture de leur environnement et de la place qu'elles y occupent ! Elles se découvrent de nouvelles passions et comprennent qu'elles sont capables d'entrer en relation avec les autres personnes incarcérées mais aussi avec les personnes en situation d'autorité qui, qu'on le veuille ou non, font partie de ceux et celles avec qui il faudra bien s'entendre! Elles utilisent toutes les ressources disponibles de la prison et s'organisent pour être moins dérangées par le contexte carcéral. Elles n'ont plus besoin de consommer de la drogue pour vivre! Elles deviennent ce qu'elles auraient dû toujours être : des personnes autonomes et libres dans un espace qui n'en demeure pas moins une prison. En fin de parcours, on aura donc les effets suivants : les personnes âgées profiteront du « cascading » carcéral plus rapidement et en meilleure santé.

Donner un sens à sa vie s'avère la meilleure source de motivation qu'un être humain puisse posséder *

Le modèle d'intervention s'applique tout à fait à la situation des personnes incarcérées. L'ensemble du modèle* répond aux besoins des personnes visées par l'approche, mais l'aspect de la perte est assurément taillé sur mesure pour la réalité de l'incarcération. En effet, dans le cas de toutes les personnes âgées qui entrent en prison pour la première fois, il se produit instantanément une perte colossale : l'ensemble de leur vie d'avant. Avant même de se demander s'il y a d'autres pertes de capacités (de nature physique ou mentale), il est très important de tenir compte de celle causée par le choc de l'emprisonnement. Une fois que l'approche a bien pris note de cette perte initiale, commune à toutes les personnes incarcérées, elle peut alors s'inscrire dans le modèle conceptuel mis de l'avant et qui propose la sélection des meilleures capacités restantes, l'actualisation optimale des capacités physiques, psychologiques, sociales et psychiques et la compensation pour les pertes de capacités. Évidemment, ce processus d'actualisation doit inclure un principe important qui est celui de donner un sens à sa vie, ce qui s'avère la meilleure source de motivation qu'un être humain puisse posséder. En effet, pourquoi se lever le matin si notre vie n'a pas de sens. « *Cette notion du sens de la vie a été introduite par Ryff (1982) comme l'une des six caractéristiques nécessaires au vieillissement réussi. Elle a ensuite joué un rôle important dans le modèle proposé par Leclerc en 2007, modèle qui s'adapte en tous points aux besoins des personnes âgées incarcérées dès qu'on y ajoute l'aspect de la perte initiale de liberté ».

*Inspiré par Leclerc Gilbert, « Le paradoxe du vieillissement réussi », dans Précis pratique de gériatrie, troisième édition, Arcand – Hébert, Edisem et Maloine, 2007, pages 63 et 81.

De plus, et ce qui s'avère un atout indéniable dans le cas des personnes incarcérées, l'approche géronto-criminologique permet de commencer à travailler en amont, c'est-à-dire avant et pendant le processus de vieillissement. On pense ici aux personnes qui entrent au pénitencier avec des sentences à perpétuité ou de très longues sentences et qui sont plus jeunes. En travaillant dès leur arrivée sur le choc de l'incarcération et sur le principe de l'acceptation de la perte, on ouvre la porte au mieux-vivre en pénitencier et à la mise en place de toutes les autres mesures visant à retarder les effets négatifs du vieillissement. Dans le cas contraire, ne pas prendre soin des effets négatifs du vieillissement en pénitencier, mais également au moment du retour en communauté, ne peut qu'occasionner des difficultés à l'ensemble du réseau correctionnel et plus particulièrement aux employés du SCC (référence).

Les modules du Modèle géronto-criminologique offert par Service Oxygène de Maison Cross Roads

Dans la suite du modèle conceptuel qui s'appuie sur de solides bases scientifiques, l'approche s'articule autour d'une série de modules qui abordent tous les éléments susceptibles de favoriser le maintien d'une bonne santé physique et mentale, et cela tant à l'intérieur des murs que lors du retour en communauté : exercice physique, alimentation, activités favorisant le maintien des habiletés cognitives et le contact social, etc. D'autres modules sur certaines difficultés d'ordre physique (par exemple : problème de mobilité) ainsi qu'un module sur le support aux personnes faisant face à une situation de fin de vie sont ajoutés au modèle d'intervention.

Il est important de préciser que la mise en place du modèle d'intervention ne cherche aucunement à remplacer le personnel spécialisé (ergothérapeute, physiothérapeute, personnel médical, etc.) mais vise plutôt à aider les personnes elles-mêmes et les personnes les plus aptes à aider ces dernières avant qu'elles ne doivent recourir au personnel spécialisé.••

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Corporation Maison Cross Roads • Service Oxygène

Le facilitateur géronto-criminologue

PAR MICHEL GAGNON ET MICHEL DUNN

Le modèle d'intervention géronto-criminologique est conçu pour être utilisé par une variété d'intervenants – incluant le personnel du SCC – mais ne devrait pas être offert par des personnes en position directe d'autorité. Il serait sans doute préférable de former des personnes provenant des organismes communautaires ou, encore mieux, de détenus plus jeunes qui agiraient comme pairs aidants et qui seraient capables d'aider, motiver et supporter les participants. On constate d'ailleurs que de telles initiatives sont déjà tentées dans certains pénitenciers ; il serait d'ailleurs de la plus haute importance de mettre en place une structure solide et unifiée dans l'ensemble du Service correctionnel canadien afin d'éviter l'éparpillement des efforts et prendre la mesure des retombées de l'implantation d'un modèle d'intervention adaptées aux personnes âgées judiciarisées.

Le type de facilitateur proposé augmenterait les niveaux de réussite auprès de la clientèle et minimiserait la surcharge de travail pour le personnel du SCC. C'est pourquoi il est suggéré de recruter des personnes incarcérées plus jeunes pour assumer le rôle de facilitateur.

Un module favorisant l'exercice physique

Prenons par exemple le module favorisant l'exercice physique. Il serait possible, comme déjà souligné, d'offrir à un détenu plus jeune la possibilité de recevoir une formation adéquate qui pourrait lui permettre de jouer le rôle d'animateur d'activités physiques destinées aux personnes âgées incarcérées. Et cette formation pourrait éventuellement être donnée par les responsables du département des sports de chaque établissement.

Les quatre objectifs fondamentaux du modèle d'intervention géronto-criminologique

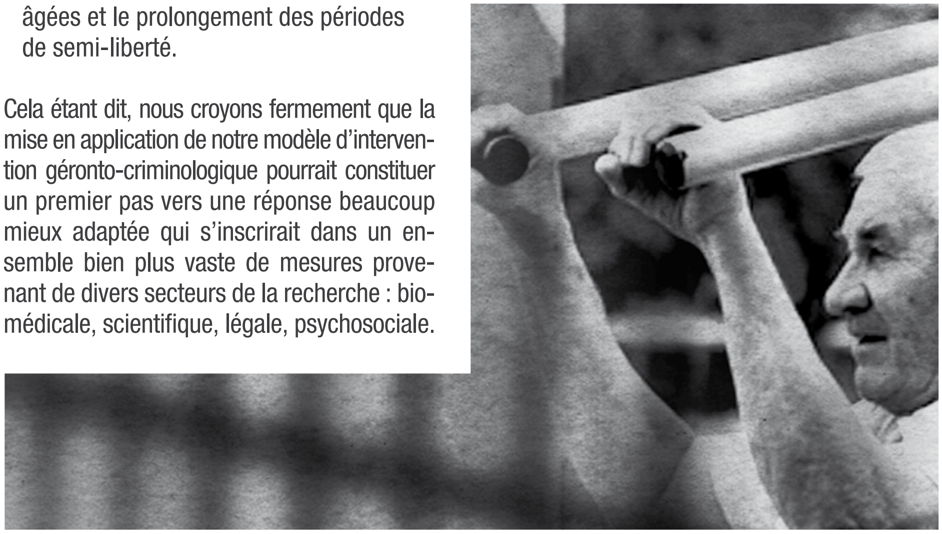
- Fournir aux personnes âgées incarcérées l'expertise gérontologique requise par leur condition afin de leur assurer un vieillissement réussi.
- Inciter fortement les personnes âgées incarcérées à s'engager positivement dans le déroulement de leur plan correctionnel et les amener plus rapidement vers une réintégration réussie au sein de la communauté.
- Donner aux personnes incarcérées impliquées dans le projet de pairs aidants une solide formation et un travail des plus valorisants durant leur incarcération qui pourront ensuite leur servir lors de leur retour en communauté.
- Alléger considérablement le fardeau financier pour les contribuables en évitant l'incarcération prolongée des personnes âgées et le prolongement des périodes de semi-liberté.

Cela étant dit, nous croyons fermement que la mise en application de notre modèle d'intervention géronto-criminologique pourrait constituer un premier pas vers une réponse beaucoup mieux adaptée qui s'inscrirait dans un ensemble bien plus vaste de mesures provenant de divers secteurs de la recherche : biomédicale, scientifique, légale, psychosociale.

Le modèle d'intervention géronto-criminologique sera bénéfique pour tous les acteurs concernés dans ce vaste projet qui consiste à :

- préserver la dignité des personnes âgées incarcérées en leur offrant toutes les possibilités de purger leur peine d'incarcération sans qu'elle ne mène pour plusieurs, à défaut d'une prise en charge structurée, à une condamnation à mourir en pénitencier ;
- s'assurer que les personnes âgées incarcérées pourront retourner dans la collectivité en bonne santé physique et mentale afin d'y assumer l'entièreté de leur rôle de citoyens âgés ;
- réaliser les deux objectifs qui précèdent dans le respect des budgets alloués au SCC.

Ce type de mesure, qui nourrirait aussi la recherche, pourrait être mesuré en termes d'efficacité et ramener le Canada au rang de leader mondial, sans pour autant négliger la protection de la société...••



Sortir de prison âgé. Et après?

PAR CLAIRE GUENAT

Serge, 64 ans, et Marc, 57 ans, ont passé une bonne partie de leur vie en prison. Robert, 82 ans, et Pierre, 56, sont entrés en détention à respectivement 78 et 55 ans. Ils ont tous les quatre été libérés il y a quelques mois. Au-delà de leur passé carcéral, ces hommes partagent une expérience commune : celle du retour en collectivité à un âge avancé. Alors que de plus en plus de chercheurs s'intéressent à leur vécu, leurs besoins ou leur prise en charge en détention, très peu se questionnent sur leur avenir à l'extérieur des murs. Que se passe-t-il une fois dehors? Grâce à la collaboration de deux organismes communautaires, nous avons pu rencontrer une vingtaine d'hommes, qui, comme Serge, Marc, Robert ou Pierre ont réintégré la société passé 50 ans et nous ont permis d'obtenir des éléments de réponse.

Comment reprendre une vie normale dans la mesure où la révélation de leur crime a causé beaucoup de dommages?

Peu importe le nombre d'années passées en prison, le retour en collectivité implique avant tout de repartir de zéro. Il nécessite de nombreux apprentissages dans le but de s'adapter à une nouvelle vie. Pour Serge et Marc, le plus important est de se réhabituer au fonctionnement de la société : comment se servir d'une carte de guichet, d'un cellulaire ou d'un ordinateur? Pour Robert et Pierre, leur remise en liberté suppose de réintégrer une société dans laquelle ils ont tout perdu : comment reprendre une vie normale dans la mesure où la révélation de leur crime a causé beaucoup de dommages? À cela s'ajoutent des difficultés d'accès à l'emploi. Si l'emploi représente pour eux un réel besoin financier ou occupationnel, son accès est limité par leur passé criminel et leur âge. D'une part, les employeurs sont moins enclins à embaucher des personnes judiciarisées, de surcroit lorsqu'il s'agit de « vieillards ». D'autre part, se voyant souvent offrir des emplois demandant une bonne forme physique, la plupart d'entre eux se retrouvent contraints de refuser.

Les individus isolés socialement se retrouvent dans une situation de fragilité voire de marginalité importante

Ces difficultés peuvent toutefois être tempérées grâce à la présence de solidarités sociales en provenance de la famille et de la collectivité. Les hommes qui sont entourés de leurs proches témoignent d'une expérience positive tant que leur famille est présente : elle les soutient émotionnellement et matériellement et elle participe au regain d'une identité sociale valorisante en leur offrant la possibilité d'exister hors du champ pénal et carcéral. À l'opposé, les individus isolés socialement se retrouvent dans une situation de fragilité voire de marginalité importante. Ce n'est qu'en se tournant vers les membres de la communauté qu'ils parviennent à retrouver un semblant de sens vis-à-vis de leur sortie de prison. Ainsi, en prenant le temps de lui demander chaque matin comment il va, le serveur du fast-food où Serge prend son café tous les matins devient un des piliers de son retour en collectivité.••

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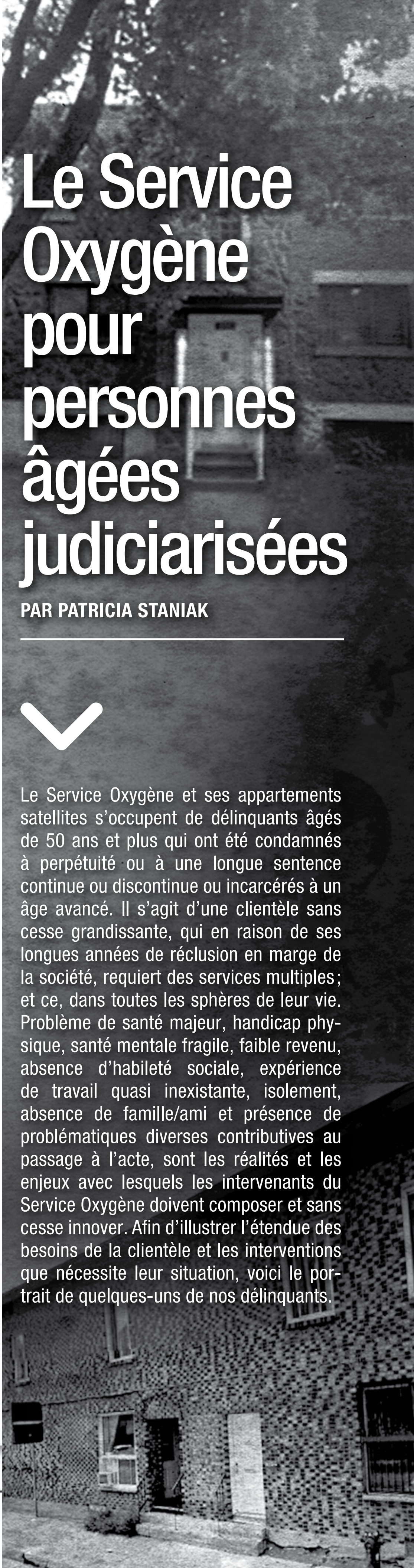


Le Service Oxygène pour personnes âgées judiciarisées

PAR PATRICIA STANIAK

Le Service Oxygène et ses appartements satellites s'occupent de délinquants âgés de 50 ans et plus qui ont été condamnés à perpétuité ou à une longue sentence continue ou discontinue ou incarcérés à un âge avancé. Il s'agit d'une clientèle sans cesse grandissante, qui en raison de ses longues années de réclusion en marge de la société, requiert des services multiples ; et ce, dans toutes les sphères de leur vie. Problème de santé majeur, handicap physique, santé mentale fragile, faible revenu, absence d'habileté sociale, expérience de travail quasi inexistante, isolement, absence de famille/ami et présence de problématiques diverses contributives au passage à l'acte, sont les réalités et les enjeux avec lesquels les intervenants du Service Oxygène doivent composer et sans cesse innover. Afin d'illustrer l'étendue des besoins de la clientèle et les interventions que nécessite leur situation, voici le portrait de quelques-uns de nos délinquants.

Quelques portraits des délinquants desservi par le Service Oxygène et/ou ses Appartements Satellites

Jacques, âgé de 76 ans, cardiaque, aux prises avec des douleurs chroniques aux hanches et de l'arthrite aux mains, a été victime d'un accident dernièrement alors qu'il se déplaçait en triporteur. Ce dernier a été happé par un automobiliste. Fracture de l'humérus. Depuis ce malheureux incident, il a perdu le peu d'autonomie qu'il possédait. Ne répondant pas aux critères d'admissibilité aux résidences de type intermédiaire, Jacques reçoit la visite du CLSC deux fois par jour pour son attèle et l'aide au bain à raison d'une fois par semaine. Quant aux services de ménage et de repas qui lui ont été proposés, les coûts s'avèrent trop élevés pour en bénéficier. Les rendez-vous médicaux sont nombreux et exigent la présence d'un intervenant du Service Oxygène, le sujet ayant des difficultés à comprendre le discours médical. Soupçon d'un cancer. Biopsie effectuée pour valider la situation. Sujet lourdement médicamenté et difficultés importantes dans ses déplacements.

Benoit, âgé de 75 ans, souffre d'emphysème. Nombreux séjours à l'hôpital pour stabiliser son taux d'oxygène dans le sang. Aucune tolérance à l'effort. Tout comme le cas précédent, ce dernier n'est pas admissible aux résidences de type intermédiaire. Aux prises avec des quintes de toux sévères et des sécrétions importantes, André reste cloîtré chez lui. Une évaluation par le CLSC est en cours pour valider ses besoins. Malheureusement, le maintien à domicile bien que souhaitable pour certaines tranches de la société, n'est pas réaliste pour la clientèle du Service Oxygène, n'ayant pas des ressources suffisantes et sans habileté médicale pour composer avec les différents services qu'elle requiert. À cet égard, leur lacune nécessite une présence importante de la part des intervenants. Épicerie, rendez-vous médicaux, prise de rendez-vous, achat d'objets divers, documents à remplir, réconfort et écoute sont requis sur une base quasi quotidienne.

Jean, âgé de 55 ans est sourd de naissance. Ce dernier possède une bonne santé physique, de bonnes habiletés sociales et s'avère apte au travail. Sa criminalité est connue de la communauté sourde de Montréal, un petit univers où tout se sait et qui n'est pas sans conséquence. Sans ressource et aux prises avec un faible revenu, Charles occupe une chambre aux appartements satellites. Communication difficile, ce qui rend le processus de réinsertion plus complexe. Multiples démarches auprès de l'Institut Raymond-Dewar, la Maison des sourds, L'ÉTAPE et le Centre de services sociaux du Montréal métropolitain (CSSMM). Après plusieurs mois, les intervenants du Service Oxygène sont maintenant en mesure avec l'aide d'un interprète, d'intervenir auprès de Charles. La recherche d'un emploi stable et d'un logement est amorcée, mais les obstacles sont nombreux. Les démarches légales pour la pension de son fils sont terminées. D'autres seront entamées sous peu pour son droit de visite. Suivi psychologique récent afin de permettre au sujet de libérer ses émotions refoulées et travailler ses distorsions cognitives face au délit.

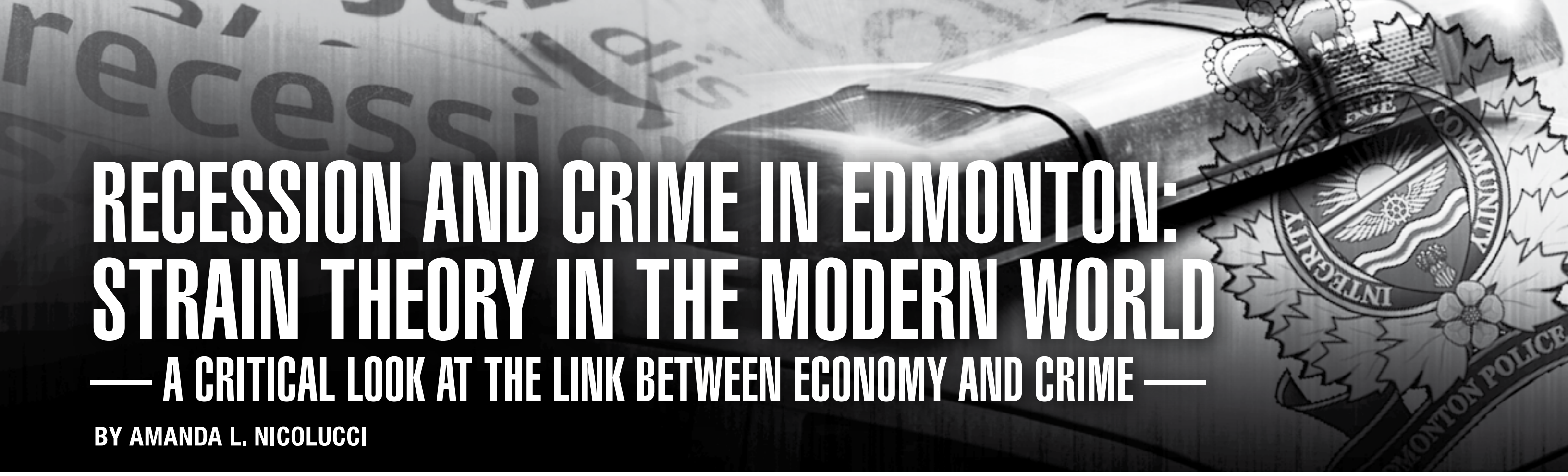
Denis, est âgé de 53 ans et a été condamné à une sentence à perpétuité à l'âge de 18 ans. Le délit pour sa part a été commis alors qu'il était âgé de 15 ans. Ce dernier a été libéré en maison de transition en 1985, puis a obtenu sa LCT (libération conditionnelle totale) en 2012. Nombreux échecs en communauté, sans aucune récidive toutefois. Ce dernier occupe également une chambre aux appartements satellites. Ses longues années de réclusion, ne lui ont pas permis de développer des habiletés sociales adéquates. Aux prises avec une absence de maturité, une instabilité émotive, un manque d'autonomie, une impulsivité mal gérée et une faible tolérance face à la frustration, ce dernier pratique l'auto-sabotage dès que sa situation s'améliore. Dès lors, il retrouve l'attention et une présence plus soutenue de la part des intervenants. Denis se positionne en victime, état qu'il alimente par de nombreuses distorsions cognitives et une rigidité au niveau de la pensée. Sa toxicomanie n'est toujours pas résorbée. Celle-ci trouve présentement sa source dans son désir de diminuer sa douleur chronique et son insomnie. Denis est présentement apte au travail. CV, recherche d'emploi, counseling, accompagnement et gestion de crise forment le quotidien des intervenants du Service Oxygène auprès du sujet.

Pour la plupart des personnes âgées judiciarisées, les appartements satellites du Service Oxygène représentent la dernière ressource avant le circuit de l'itinérance

Chaque personne âgée judiciarisée admise aux appartements satellites du Service Oxygène a son histoire, un passé trouble et un avenir sombre. Plusieurs ont été des victimes avant d'être un délinquant. Plusieurs ont subi un choc traumatique important avant ou pendant leur incarcération et avec lequel ils ont appris à vivre en développant de redoutables mécanismes de défense. Leur réinsertion sociale, le développement des habiletés sociales, l'augmentation de l'autonomie, l'acquisition d'outils pour développer et maintenir un fonctionnement communautaire adéquat s'avèrent donc un défi de taille, d'autant plus qu'il est souvent accompagné de diverses problématiques physiques et mentales avec lesquelles il faut également composer. Les appartements satellites du Service Oxygène représentent donc, pour la plupart des personnes âgées judiciarisées, la dernière ressource avant le circuit de l'itinérance. Une équipe qui les comprend, les supporte et qui les aide à retourner en société avec un minimum de dignité, de confort et de soins.••

Corporation Maison Cross Roads

Service Oxygène



RECESSION AND CRIME IN EDMONTON: STRAIN THEORY IN THE MODERN WORLD

— A CRITICAL LOOK AT THE LINK BETWEEN ECONOMY AND CRIME —

BY AMANDA L. NICOLUCCI

- SUMMARY -

THIS ARTICLE EXPLORES THE RELATIONSHIP BETWEEN INCREASES IN CERTAIN TYPES OF CRIME, LOSS OF EMPLOYMENT, AND STRAIN THEORY. WITHIN A FRAMEWORK OF ROBERT K. MERTON'S CLASSICAL STRAIN THEORY (1957) AND ROBERT AGNEW'S 1992 MIGRATION OF SAID THEORY TO INCLUDE THE IMPACT OF STRAIN ON CRIME RATES AND DELINQUENCY, NICOLUCCI USES STATISTICS FROM THE EDMONTON POLICE SERVICE TO FATHOM THE CONNECTION BETWEEN RECESSIONARY PRESSURES CAUSED BY FLUCTUATING OIL PRICES AND RISING PROPERTY CRIME IN EDMONTON, ALBERTA.

Alberta, once known as a booming province full of prosperity and opportunity has fallen into a recession. Due to falling oil prices, which has contributed to a steadily rising unemployment rate, the province has seen growth in crime rates, particularly in non-violent property crimes as reported by the Edmonton Police Service (2016). According to Robert K. Merton (1957), socioeconomic status can contribute to an individual's delinquency and this is known as "strain theory", which states that certain pressures of everyday life can contribute to an individual's likelihood of committing crimes. While this theory was first elaborated in the mid-20th century, it helps explain the rise in crime in Alberta in the present day. Looking at crime trends in Edmonton, Alberta's capital city – which has felt the effects of declining oil prices to a great extent - conclusions can be thus drawn that Merton's classic strain theory still applies in the modern world. A more recent theory presented by sociologist Robert Agnew called general strain theory (1992) has contributed to Merton's idea of strain. While Agnew doesn't negate Merton's earlier conclusions, he adds that "strain theory has a central role to play in explanations of crime and delinquency" (47), which can be pivotal when trying to decipher the rise and fall in crime trends or patterns.

Part of strain theory is similar to the idea that human beings feel they have a right to a certain lifestyle and that anger and stress can result in some who have attained that lifestyle and it is taken away from them. In the case of Albertans for example, if an individual has become accustomed to living a certain lifestyle full of perceived luxuries and it is suddenly halted because of job loss, Agnew (2006) might suggest that these individuals are experiencing anger and stress because they are no longer able to achieve certain goals they may have set for themselves. This is perhaps aggravated by Agnew's further suggestion, that "individuals feel they have a right to what others have" (Agnew, 2006, p. 33). In the context of Alberta's economic fluctuations, this can mean that when someone who is gainfully employed and earning a significant annual salary suddenly loses that job due to a crash in the economy, it may leave them feeling that a basic right has been taken from them.

While strain theory only applies to increases in certain types of crime, it could cause individuals who are normally not considered delinquent to turn to deviant means – such as stealing for example. According to the Edmonton Police Services' Crime Analysis Unit, the Four Property Crime Indicators—compromised of Break and Enter, Theft from Vehicle, Theft of Vehicle, and Theft over $5000—were up to 18,817 in 2015 compared to only 15,534 in 2014. Now while these numbers only relate to reported and founded crimes, it is a good indication that property crimes rose substantially in only one year's time, a time frame that succinctly coincides with Alberta's entering a recession in 2014 that was in full swing by 2015. Once again this is true to Agnew's general strain theory (2001), in which he states that "unemployment leads to the impression of goal blockage, which is the failure to reach highly valued goals" (p.325). Thus, it seems to posit property crime as a result of dramatic and sudden individual loss of income.

The unemployment rate in Alberta has contributed to delinquency rates because as previous patterns outlined in the Eight Crime Indicators Report presented by the Edmonton Police Service suggest, every time there is a spike in crime, there also seems to be a recession, lending credence to Agnew's 2012 affirmation that "delinquency results when individuals are unable to achieve their goals through legitimate channels" (33). Once again, this affirms the continued relevance of Merton's classic strain theory through Agnew's inclusion of crime and delinquency, especially in regard to Alberta's current demographic. When unemployment is on the rise, a significant loss of wages accompanies it, and as Agnew (2012) has pointed out,individuals are more likely to turn to crime when legal means have been exhausted and individuals feel they are unable to "escape from painful or aversive conditions" (34). When an individual loses their main source of income through job loss, they could perceive this as unjust, painful and stressful and this may lead them to delinquency.

A study conducted by Thornberry & Christensen (1984) also demonstrates the strong correlation between recessionary unemployment and increased criminal activity. While there are almost three decades between this notion and Agnew's, the main focus remains unchanged – that crime can be directly influenced by unemployment especially "for those who had prior history of delinquency and those who worked in 'blue collar' occupations. Other sociologists have linked such crime to other factors such as being predisposed by 'a social background linked to criminal activity' or not 'having a high school degree' or [not] coming from a higher socioeconomic background" (Chapman et al).

The statistics provided by the Edmonton Police Service in the Eight Indicators of Crime Report help support the theories that have been presented over time and that crime rates can be influenced by unemployment that is the direct result of recession or other factors, such as the rise and fall of oil prices.

Professor of Sociology, Stephen W. Baron (2008) asserted that "it is the anger over unemployment that might lead to crime, along with relative deprivation, monetary dissatisfaction, poor financial situation, external attributions, deviant peers, and deviant values" (405). While Baron suggests that there are other factors contributing to crime, such as social circles and values that clash with societal norms, he places great emphasis on frustration with monetary means (405). This means that certain individuals who find themselves in a less-than-favourable financial situation will turn to delinquency in order to fulfill a need and this may be why property crimes are on the rise in the vicinity of Edmonton while violent crimes remain relatively stable.

Generally speaking, according to general strain theory (Agnew, 1985), people who have no source of income and must provide for themselves (as well as a need to continue to live a lifestyle they once had) or their families (sole source of income in a family setting) are not necessarily delinquents, they just may be more likely to participate in delinquent behaviour that then drives crime statistics. As Raphael & Winter-Ebmer (2001) pointed out, "increased legitimate employment opportunities deter potential offenders from committing crimes, a decline in the unemployment rate such as that observed during the 1990s may be said to cause the declines in crime rates" (p.260). Meaning people who feel they have an obligation to themselves or perhaps the members of their family to continue living a certain way will turn to deviant measures to continue that lifestyle, however if they are gainfully employed, the perceived need to turn delinquent is circumvented.

This is not the first time in recent Albertan history that the crime rates have fluctuated in such a way. According to the Eight Crime Indicators Report by Edmonton Police Service in 2007, reported property crimes in Edmonton were significantly higher than where they are today, and they slowly started to decline after that point. Meanwhile, Alberta was hit with an economic recession around the same time, meaning in the past 10 years when Alberta was hit with a decline of legitimate employment opportunities, the crime rate also spiked. Although writing during the early 1990s, Don Weatherburn's 1992 assertion that these types of trends are not uncommon remains relevant by demonstrating the strong correlation between recession, which involves higher-than-normal unemployment, and crime:

> It might be argued, if unemployment does anything, it reduces the capacity of an individual to earn income from legitimate activity. It would hardly be surprising if some people responded to unemployment, then, by turning to illegitimate activity. If this were not enough, high rates of unemployment must surely weaken the social bonds between young people and the wider society. This, by itself, would increase the risk that the young will drift into deviant subcultures where involvement in crime of one form or another becomes a way of life. (Weatherburn, 1992, p.1).

Weatherburn clearly explains the link between crime and delinquency and how fulfillment of needs plays a part in why people turn to deviance as evidenced by Alberta's heightened criminal activity in regards to property crimes in 2007. Once again, the same pattern was not found in violent crimes, such as sexual assault or homicide, in fact those numbers have remained fairly stagnant throughout the years. It all ties into the fact that when recession strikes, property crimes tend to rise significantly while violent crimes do not, securing the idea that recession sparks delinquent behaviour for the reasons set forth in Merton's classic strain theory and extended through Agnew's general strain theory.

Recession is a normal part of any country's economy, and has been known to strike Canada's economy every so often. In the case of the province of Alberta, this is no different; and since Alberta is known primarily for oil production (a natural resource based industry) it is no stranger to the booms and busts of the oil industry and the inevitable recessions that follow. During such periods, Alberta will notice an increase in non-violent criminal trends as a direct result of higher unemployment rates (Eight Indicators of Crime, 2016). Edmonton is a prime example of how Merton's classic strain theory is still relevant in helping predict certain delinquent behavioural patterns. If individuals become accustomed to certain living conditions – which included various luxuries and in many cases real estate and savings – and it is taken away for reasons beyond their control, such as recession, some may succumb to the effects of strain and use any means at their disposal to release the stress, including engaging in an illegal or deviant lifestyle.••

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1. A copy of this report was given to me (author) by the Sergeant in charge of the Intelligence Unit.

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RÉSUMÉ : RECESSION AND CRIME IN EDMONTON: STRAIN THEORY IN THE MODERN WORLD —A CRITICAL LOOK AT THE LINK BETWEEN ECONOMY AND CRIME—

PAR AMANDA L. NICOLUCCI

Cet article se penche sur les rapports entre l'augmentation de certaines formes de criminalité, les pertes d'emploi et la perspective fonctionnaliste [strain theory]. Dans le cadre de la perspective fonctionnaliste classique de Robert K. Merton (1957) et de l'adaptation de cette théorie par Robert Agnew en 1992 afin d'y inclure l'incidence des tensions sur les taux de criminalité et la délinquance, Nicolucci utilise des statistiques provenant du Service de Police d'Edmonton pour comprendre le rapport entre les pressions liées à la récession, causée par la fluctuation des prix du pétrole, et l'augmentation des crimes contre les biens à Edmonton (Alberta).

COMMUNITY OF RESTORATIVE RESEARCHERS: INTERNATIONAL ADVISORY BOARD

BY MARGOT VAN SLUYTMAN, Restorative Practitioner and Therapeutic Writing Facilitator, Sawbonna Project for Living Justice

- SUMMARY -

THIS ARTICLE BY MARGOT VAN SLUYTMAN INFORMS ON THE COMMUNITY OF RESTORATIVE RESEARCHERS FOUNDED IN 2013 BY IAN MARDER, UNIVERSITY OF LEEDS (UK) AND MS. VAN SLUYTMAN'S OWN LIVED-EXPERIENCE OF RESTORATIVE JUSTICE. VAN SLUYTMAN APPLAUDS MARDER'S IMPLEMENTATION OF THIS BOARD, TERMING IT A COMMUNITY OF RELATIONSHIPS THAT NOURISHES, CHALLENGES, DEEPENS AND EXPANDS BOTH THE REASON AND THE MANNER IN WHICH WE APPROACH RESTORATIVE RESEARCH. WITHIN A FRAMEWORK OF MARDER'S MAXIM THAT "NETWORKS LIKE THIS ARE ABOUT INFORMATION SHARING AND RELATIONSHIP BUILDING", VAN SLUYTMAN RELATES HER OWN LIVED-EXPERIENCE OF RESTORATIVE JUSTICE FOLLOWING THE MURDER OF HER FATHER, THEODORE VAN SLUYTMAN. SHE RECALLS HOW THIS JOURNEY LED HER TO DEVELOP THE SAWBONNA (I SEE YOU) PROJECT BASED ON THE VALUES OF RESTORATIVE JUSTICE: RESPECT, RESPONSIBILITY, AND RELATIONSHIP. VAN SLUYTMAN ALSO PAYS HOMAGE TO EMMA'S ACRES, A GARDEN PROJECT (FOUNDED BY THE MAN WHO MURDERED HER FATHER, GLEN FLETT-AND HIS WIFE SHERRY) IN WHICH THOSE SERVING TIME CAN GIVE BACK TO COMMUNITY. AS SUCH, VAN SLUYTMAN INFORMS ON THE COMMUNITY OF RESTORATIVE RESEARCHERS AND ITS INTERNATIONAL ADVISORY BOARD, OF WHICH SHE IS A MEMBER, WHILE RENDERING THE ESSENCE OF HER AND GLEN'S RESPECTIVE JOURNEYS TO FIND AND CREATE SPACES THAT HONOUR THE GIFT OF HEALING THROUGH RECONCILIATION.

"Networks like this are about information sharing and relationship building".
Ian Marder, University of Leeds, UK,
Founder of the Community of Restorative Researchers.

Autumn is here. Rain settles upon the bent sunflowers strewn about the neighbourhood. A profusion of herbs in abundant gardens lend the air perfumed gratitude. Growth, death, the hurry up and be still fervor of winter's approach, whispers. Life cycles are eternal. Twinned with what can feel to be 'untimely deaths' , precious births. Hope for rearticulating justice never ceases. We daily gestate our stories. Informed, reformed, transformed by our lived-experiences. And lived-experiences are a garden - Are a cycle which requires tending. Tending presupposes relationship. The International Advisory Board of Restorative Researchers is a community of relationships that nourishes and challenges, deepens and expands both the reason and the manner in which we approach restorative research, within the crucible of a Sawbonna lens. A lens that is founded upon values of respect, responsibility, relationship, infused with wonder.

Ian Marder, Leeds University (UK) founded the Community of Restorative Researchers three years ago. From that community, he sought individuals to be on its International Advisory Board. His vision to include many varied voices in contributing to the ever-evolving terrain of restorative justice inspired him to recruit members who share his passion and commitment. With its aim, sharing in critical dialogue about restorative practices and research, this community and its advisory board, is a hub via which all manner of idea is shared. In the sharing, sprouts the conversations that are required to better inform the walk/work/vocation of each of its members-conversations that inform research and practice.

My own lived-experience of restorative justice, began thirty years after the murder of my Father, Theodore Van Sluytman, in Toronto 1978. In 2007, the man, Glen Flett, who committed that crime, emailed me and we chose to speak with each other, and to meet each other. From 2007-2016, both Glen and I continue on a journey of finding and creating the spaces where we can honour the gift that is our healing, that is our Sawbonna. Glen and his wife, Sherry, have founded, Emma's Acres, a farm in which those serving time can offer their time to give back to the community in respect of and compassion for the individuals who have borne the brunt of their crimes. At that garden, those giving time also receive, as they weed, dig, plant, water, and witness new life sprout.

This two-way dialectic of restorative practices speaks concrete action of life renewing itself. Emma's Acres is Sawbonna in action, is about community. Akin to the community Ian founded, seeds are planted, ideas are tended, weeds are pulled, the fruits of each of our labours feed and nourish us. And the garden grows.

Poets, academics, independent researchers, students, project managers, policy makers, practitioners, advocates, and activists, from over twenty countries constitute this community, this hub.

Ian Marder offers these words: "This community continues to recruit volunteers to assist with or lead on activities on an ad hoc basis. If there is anything you want to do, anything you think we should be doing, or anything we can help you with, or if you think any of your students (or anyone else) would like to help, get involved or otherwise participate, please get in touch: **i.marder@leeds.ac.uk**".

To be connected to this community of individuals who work daily to be part of ongoing conversations and to create new conversations that are so very necessary to sculpting a humane and inclusive justice system; this connectedness is what humanity must strive for. And, like a garden that inspires, invites, invigorates, this community continually strives to plant and nurture abundant seeds. Not all will sprout; but, all remind us to tend, to tend, to tend.

Here are the Board Members

Dr. Don John Omale, Federal University Wukari
Dr. Esther Friedman, Linnaeus University
Yutaka Osakabe, Aberdeen University
Margot Van Sluytman, Sawbonna Project for Living Justice
Vicenç Rul-lan, University of the Balearic Islands
Terri Kalaski, Independent Consultant
Ali Gohar, Justice Peace Initiatives
Grace Loseby, Brighton and Hove City Council
Dr. Heather Norris, Aberystwyth University
Haley Farrar, Victoria University of Wellington
Branka Peuraca, University of Zagreb
Dominic Barter, Restorative Circles
Demetra Sakelli, RISE Correctional Counselling and Prevention
Mary Clarke Boyd, Institute of Technology Sligo
Tania Nascimento, Community of Restorative Researchers
Jon Collins, Restorative Justice Council
Monique Anderson, KU Leven
Dr. Federico Reggio, University of Padua
Michael O'Connell, Government of South Australia
Dr. Nadia Wager, Willow Consultancy and Training
Nicola Preston, International Institute for Restorative Practices
Marius Whelan, Mediation Dynamic
Susan Phillips, Southampton Solent University
Christina De Angelis, Mediators Beyond Borders
Detective Chief Inspector Dominic Human, Cambridgeshire Constabulary
Nick Powell, University of Waikato
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Niamh O'Carroll, Trinity College Dublin
Dr. Anamaria Szabo, De Montfort University
Dr. Brian Payne, University of Gloucestershire
Dr. Belinda Hopkins, Transforming Conflict
Dr. Razwana Begum, Probation and Community Rehabilitation Service of Singapore
Pamela Cytrynbaum, Chicago Innocence Center
Rose Gordon, Taos County Juvenile Justice Board
Margit Guenther, Community of Restorative Researchers
Marcus Wilson, Antioch University
Claire DeWind, Washington University

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Planting Small Gardens
No questions are left.
Not a soul's vision, but
My own to be fertilized here.
Planting my small gardens,
My fingernails black,
My skin rough.
Not a soul to answer to, but
The tiny seeds that
Need the water that
Will tumble from the skies.
The skies kissed by sweet rain,
And my tears. As this over-flowing
Watering can promises only
Birthing. Only hope.

© Margot Van Sluytman. (2008).
From *The Other Inmate: Mediating Justice Mediating Hope – Poetry and Workbook for Restorative Practices.* Palabras Press.

An internationally-respected independent voice in the field of Restorative Justice, Margot's lived-experience greatly informs her justice advocacy, lectures, and writings. She has been invited to colleges, and universities (Ottawa, Dalhousie, Simon Fraser, Acadia, as well as Cambridge, Northumbria, Durham, and Leeds in Canada and the UK, respective) and to healing centres, police headquarters, prisons, and homeless shelters to share with participants the power of Restorative Justice to better serve all citizens.

In February of this year Margot was invited to share one-on-one conversation with Archbishop Emeritus Desmond Tutu in Cape Town, South Africa where they discussed the Truth and Reconciliation Commission. The International Finance Corporation, a division of the World Bank Group, invited Margot to speak in Cape Town and Washington, DC about how the *values* upon which Restorative Justice are founded - respect, responsibility, and relationship - can and must be used.

In March, Margot had conversation about the role of Restorative Justice with the Office of the Victims Commissioner of England and Wales, speaking of the fact that Restorative Justice is often misunderstood and misrepresented in society, and that this can and must change.

Margot continues to advocate restorative justice around the globe, sharing her words written and spoken of lived-experience.

RÉSUMÉ : COMMUNITY OF RESTORATIVE RESEARCHERS: INTERNATIONAL ADVISORY BOARD

PAR MARGOT VAN SLUYTMAN

Cet article de Margot Van Sluytman nous renseigne sur la *Community of Restorative Justice Researchers* [communauté des chercheurs en justice réparatrice], fondée en 2013 par Ian Marder, University of Leeds (RU) et sur son propre vécu en justice réparatrice. Elle salue la mise en place de ce conseil par Marder, affirmant qu'il s'agit d'une communauté de rapports interpersonnels, qui nourrit et remet en question et approfondit et élargit la motivation et la façon dont nous approchons la recherche en justice réparatrice. Dans le cadre de la notion énoncée par Marder, selon laquelle « des réseaux comme ceux-ci ont trait au partage d'information et à l'établissement de relations », Van Sluytman fait état de son propre vécu de la justice réparatrice à la suite du meurtre de son père, Theodore Van Sluytman. Elle rappelle comment son cheminement l'a menée à mettre sur pied le projet *Sawbonna* (je te vois), fondé sur les valeurs de la justice réparatrice : le respect, la responsabilité et les rapports humains. Elle rend également hommage à *Emma Acres*, un projet de jardin (fondé par l'homme qui a tué son père, Glen Flett et son épouse Sherry) qui se veut un moyen par lequel des détenus peuvent redonner à la collectivité. Ainsi, Van Sluytman nous renseigne sur la *Community of Restorative Researchers* et son *International Advisory Board,* dont elle est membre, tout en nous transmettant l'essence de son propre cheminement et de celui de Glen Flett dans le but de trouver et de créer des espaces qui rendent hommage au don de la guérison par le truchement de la réconciliation.

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THE TERRORIST WITHIN: FROM A RESTORATIVE LENS

BY THEO GAVRIELIDES
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Co-Director of Restorative Justice for All, UK,
Visiting Professor at Buckinghamshire New University, UK,
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- SUMMARY -

IN THIS PASSIONATE AND INTROSPECTIVE RENDERING, GAVRIELIDES ADVANCES THE ABJECT COMPLICITY BETWEEN THE WORLD WE HAVE CREATED AND CERTAIN TERRORIST ACTIVITY. IN THIS LIGHT, HE HOLDS UP RESTORATIVE JUSTICE (RJ) AS AN ETHOS THAT IS PARTICULARLY WELL-SUITED FOR UNRAVELLING THE MOTIVATIONS FOR SUCH TERRORIST ACTIVITY BECAUSE THIS FORMER IS FOUNDED IN THE BELIEF THAT THERE IS GOOD IN EVERYONE AND THAT OUR COMMUNITIES WILL APPLY RJ WHETHER OR NOT OUR GOVERNMENTS CHOOSE TO ENDORSE OR FUND IT. HOLDING UP THE *JE SUIS CHARLIE* SLOGAN AS AN EXPRESSION OF A REFLECTIVE SOLIDARITY AND SHARED FEELING OF COMMUNITY AND OWNERSHIP IN WHAT HAPPENED IN FRANCE, GAVRIELIDES POINTS OUT THAT THIS DEMONSTRATION DID NOT INVOLVE ANY ENCOUNTER BETWEEN VICTIMS AND OFFENDERS AND THAT FOLLOW-UP INTERVIEWS WITH THE KILLERS' RELATIVES (AND OTHER MEMBERS OF THE MUSLIM COMMUNITY) SHOWED IT TO BE AN INCLUSIVE AND CONSTRUCTIVE ACT IN MAKING THEM FEEL PART OF THE SOLUTION AND NO LONGER THE ENEMY. QUOTING WALGRAVE, GAVRIELIDES THUS LAYS BARE A "RESTORATIVE SOCIAL ETHICS THAT COULD CONTRIBUTE TO A DECREASE IN TERRORISM".

A number of experts in terrorist studies have claimed that post-September 11, 2001 (i.e., 9/11) we have witnessed a new era of security policy, legislation and practice internationally (e.g., Haymann 2003). At least three new facts drive these policies. Terrorists are no longer seen to be acting alone. The attribution of the New York attacks to a single organization (Al Qaeda) told us that powerful terrorist networks do exist. These are not mere cells in random places, but well-funded, highly organized entities that can stand up against some of the world's most powerful nations (including the US). In fact, most of the time, these well-organized entities appear to be one step ahead of national and international intelligence. Secondly, the use of weapons of mass destruction is possible including nuclear and biological weapons (Haymann 2003). If they can be obtained, then there is no guarantee that they will not be used. Thirdly, terrorism as an act cannot be confined by time, place or nation. For example, what motivated Al Qaeda to carry out the attacks in 2001 is the same as the reasons quoted for attacks in Europe years later. Their 'war' continues without being limited by geography or time, while their own identity is more diverse than the United Nations. The same applies to ISIS (Islamic State of Iraq and the Levant) which has recruits from all over the world including young British males and females.

Before I advance this short article, I must make two disclaimers. First, I have been a long standing student of restorative justice, an ethos founded in the belief that there is good in everyone and that, in the pursuit of justice, all parties in conflict can play a role in restoration for the harm that was done (Gavrielides 2015). Prompted by 'International Restorative Justice Week', in November 2015, I wrote a blog[1] asking: "If restorative justice (as an ethos, a value and yes... as an international ideology) has the potential to bring out the best of us, help us reconcile and empower the weak, then how can people like me regain their belief in it, following events such as those in Paris two days ago?" A number of fellow researchers tried to restore my lost faith only to have it questioned again on March 22, 2016 as I watched the multiple bombings in Brussels.

The second disclaimer relates to two personal experiences that some might call ‘odd coincidences’. The first happened in 2005 when I was fortunate to have taken the train that was followed by the one bombed at King’s Cross in London. The trains were within minutes of each other, and I arrived at work completely oblivious of what had happened to the one before mine. The second coincidence took place just a few months ago when I was due to travel to Brussels and stay at the hotel above the train station that was bombed. The travel (which in the end was cancelled the day before my departure) related to a meeting that was organized by the European Commission with the aim of informing their restorative justice policies on terrorism.

CONTEXTUALIZING THE ISSUE - CLOSE TO ‘HOME’

So, I do not write without passion. However, I do want to believe that I write with truthfulness and evidence. As I questioned the limits of restorative justice, I asked myself, *who is the real terrorist in the attacks that I so fortunately escaped?* I also asked, *can a restorative justice encounter ever be possible for abstention terrorist acts?* In Paris’s case, the 'offenders' chose death and thus their non participation made restorative justice impossible. But how about their families? And what is restorative justice if not just an encounter and a diversionary method for the criminal justice system? In fact, Bueno (2013) quotes a good number of examples in Colombia, where terrorists have been able (and willing) to meet the children or family members of their victims. Furthermore, follow up research informs us that the healing effect of these meetings was significant and that the affected communities were able to ask questions, understand and restore what they could.

I cannot imagine a world where our sense of justice is measured by how many offenders we incarcerate or, indeed, how many terrorists we punish and kill. Thinking of my own fear and two coincidences, I understand that priority for public security can overrule a restorative justice response. But the many examples whereby communities came together to heal through a restorative ethos reassured me that we are not an international society of punishment and control. In fact, it reminded me of Belgium criminologist and longtime proponent of restorative justice Lode Walgrave’s maximalist vision of restorative justice. He said that "the pursuit of restorative justice is grounded in a social-ethical vision that focuses on the quality of social life. Furthering the quality of social life is possible through three ethical guidelines (or virtues) for members of the community: respect, solidarity and active responsibility" (Walgrave 2008: 79– 99).

The truth is that our communities will apply restorative justice whether or not our governments choose to endorse or fund it. For example, in the case of Paris, the French government was swift in declaring a "war on terror" and putting a ban on public gatherings. And yet what followed was unprecedented. On January 11, 2016, thousands of people from France, Europe and internationally gathered to march against what they saw as a "war on liberties". Their slogan "Je suis Charlie" showed that there is solidarity and indeed a shared feeling of community and ownership in what happened. It is true that this demonstration did not involve any encounter between victims and offenders and yet its impetus also enlivens the principles of restorative justice. It focused on the positive values of the affected communities and on what binds these communities together irrespective of faith, nationality and economic interests. One could even call this attempt ‘a ritual’. Follow-up interviews with the killers’ relatives (and other members of the Muslim community) showed that they found this ritual an inclusive and constructive act that made them feel part of the solution and no longer the enemy. "The accent was on what unites and not on what divides. We now go a step further and wonder whether a policy inspired by restorative social ethics could contribute to a decrease in terrorism" (Walgrave 2015).

The Paris demonstration reminded me that the forgotten victim in all terrorist attacks is the community and with it our humanity. But there is no effort to heal the victim who in fact gets re-victimized by the follow-up "get tough" policies. Everytime there is a new terrorist attack, the immediate reaction of politicians, criminal justice agents and the media is to declare war against the terrorists and call for special meetings to toughen up immigration rules, security policies and protocols. They forget that ‘was’ by definition should have a time and geographical limit.

Over the past few years, new anti-terrorism legislation and executive measures have been introduced in almost all Western states in the hope of meeting enhanced security obligations. Special powers have been handed over to the executive and *ad hoc* procedures introduced in the belief that these will increase effectiveness and reduce the risk of terror. While doing so, however, a number of human rights and civil liberties were put at risk or on hold until the ‘crisis is resolved’. This crisis has been ongoing since the events of 9/11 and following the recent terrorist attacks in Europe.

LOST LIBERTY AT WHAT COST?

Former American President James Madison (from 1809-1817) once said, "Perhaps it is a universal truth that the loss of liberty at home is to be charged to provisions against danger, real or pretended from abroad" (Letter of James Madison to Thomas Jefferson, May 13 1798). How true these words sound when considering, for example, the anti-terrorism legislation in the UK. The Terrorism Act 2000 and the Anti-terrorism, Crime and Security Act 2001 have exposed the British government to a number of criticisms mainly coming from international NGOs such as Amnesty International, Human Rights Watch and other national human rights groups such as Justice and Liberty (Justice 2003; Liberty 2001; Watch 2001).

The road the international community has taken is leading us to becoming more polarized than ever, while the "them" (criminals - terrorists) and "us" (victims) rhetoric dominates political speeches and media presentations (Gavrielides 2015b). And I have to ask, what will it take for society to finally raise the mirror of responsibility and look deeply into its reflection? But I had to start by first raising my own mirror of responsibility.

THE PATH FORWARD: LOOKING INSIDE

Every time I looked into this mirror, I saw nothing but myself and a thousand other fellow citizens. We are the true architects of the social fabric that generates the extremist ideologies, which then gradually corrupt universal values such as tolerance and the respect of life, dignity and brotherhood. The extremist ideology that leads those young men and women to act inhumane is not an alien virus of unknown origin. It is a product of our way of living.

Sharing responsibility and the ability to look inside also made me ask whether a public debate and a restorative dialogue for responsibility-taking and reconciliation might indeed be more fruitful than yet another 'war on terror' that could take more freedoms away from everyday people including the most vulnerable, such as those in hospitals, care homes, foster care and yes... in prisons. As I try to visualize a terrorist, I see no face. If I try harder, I see the terrorist within. Restorative justice is about taking responsibility. Not about blaming. Not about punishing. Not about hurting further and further.

Restorative justice is also all about nurturing the social bond that binds us all – yes even 'us' (the victims, the community) and 'them' (the killers, the terrorists, the offenders). I am not naïve in saying that communities will try to heal irrespective of how many labels we place on those who hurt them. The justice system must accept the pre-existence of a much older values framework that is inherent in all cultures. This system measures restoration not in the form of retribution but in equity and fairness. These values are reflected in an individual sense of wrongdoing and responsibility.••

1. http://www.theogavrielides.com/#!BlackInternationalRestorative-Justice-Week-2015c1ywn/564897180cf2708e001b9ad0 (accessed April 2016))

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RÉSUMÉ : THE TERRORIST WITHIN: FROM A RESTORATIVE LENS

PAR THEO GAVRIELIDES
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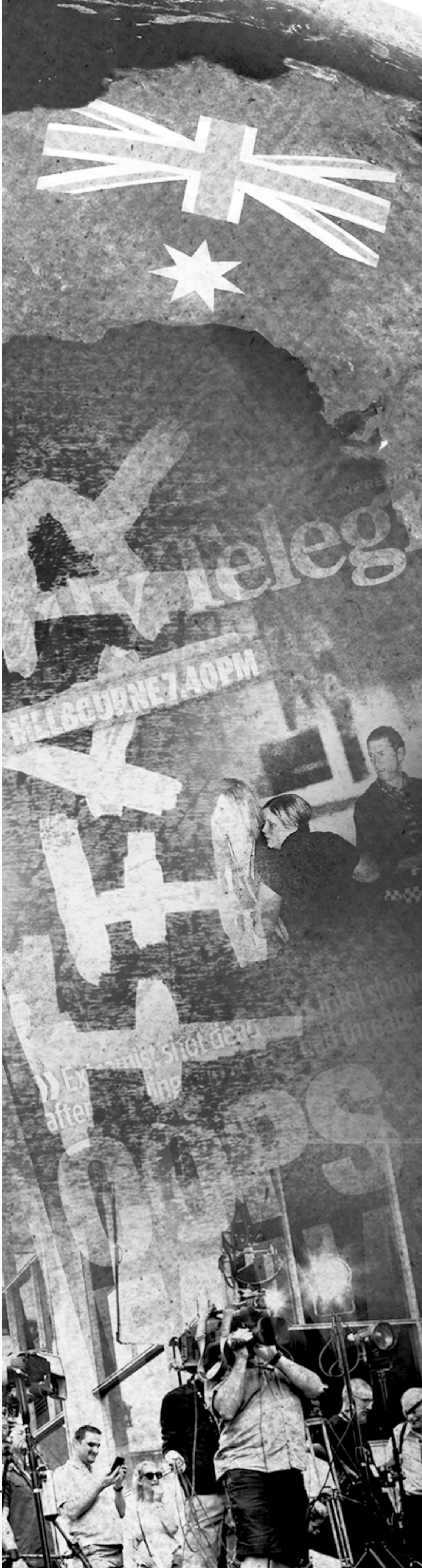
Dans ce texte empreint de passion et d'introspection, Gavrielides traite de la complexité abjecte qui sépare le monde que nous avons créé d'une activité terroriste certaine. Dans ce contexte, il présente la justice réparatrice (JR) comme une philosophie particulièrement convenable pour débrouiller les motivations qui sous-tendent cette activité terroriste, car la JR s'appuie sur la croyance qu'il y a du bon en chacun et que nos collectivités l'appliqueront, que les instances gouvernementales choisissent ou non de l'endosser ou de la financer. Faisant miroiter la slogan *Je suis Charlie* comme l'expression d'une solidarité réfléchie et d'un sentiment collectif de prise de responsabilité pour les événements qui se sont produits en France, il souligne que cette manifestation n'a donné lieu à aucun affrontement entre les victimes et les délinquants et que des entrevues de suivi auprès de membres de la famille des tueurs (et d'autres membres et la communauté musulmane) a fait ressortir qu'il s'agissait d'un geste d'inclusion constructif, qui les faisait participer à la solution, sans qu'ils soient plus longtemps considérés comme l'ennemi. Citant Walgrave, l'auteur expose ainsi une notion de réparation et de déontologie sociale pouvant contribuer à une baisse du terrorisme.

Ce texte est tiré en grande partie de livres du Professeur Wayne McCormark, rédigés en collaboration avec les présents auteurs.



TERRORISM IN AUSTRALIA: RESEARCH, RESPONSES AND FUTURE DIRECTIONS

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- SUMMARY -

PFEIFER DISCUSSES AUSTRALIA'S EFFORTS TO ESTABLISH A WELL-INFORMED AND STRATEGIC RESPONSE INFORMED BY INTERNATIONAL COOPERATION AND CROSS-JURISDICTIONAL RESEARCH AND DISCUSSES TWO IMPORTANT TRENDS IN THIS REGARD: INITIATIVES WITH ASIAN-PACIFIC JURISDICTIONS AND EVIDENCE-BASED DIRECTION FOR LINKS BETWEEN AUSTRALIA AND VARIOUS MIDDLE-EASTERN JURISDICTIONS. AT THE DOMESTIC LEVEL, PFEIFER EXPLORES THE KNOWLEDGE-BASE AND SCOPE OF POLICING PRACTICES: (1) ESTABLISHING AGENCIES SPECIFICALLY ASSESSING THREAT (SEE, E.G., PATHÉ ET AL., 2015) AND USING CASE STUDIES TO IDENTIFY POTENTIAL DANGERS POSED BY INDIVIDUALS (SEE, E.G., 2010/PORTER & KEBBELL, 2011); (2) APPLYING EXISTING PSYCHOLOGICAL AND POLICING MODELS TO THE ISSUE OF DOMESTIC TERRORISM THROUGH COMMUNITY POLICING MODELS (DUNN ET AL., 2016) AND USING PSYCHOLOGICAL PROFILING (WILSON, 2008); AND (3) TRYING TO PROACTIVELY IDENTIFY AND PROTECT AREAS OF SUSCEPTIBILITY TO TERRORIST ATTACK (E.G., AGROTERRORISM) (UNGERER & ROGERS, 2006). PFEIFER EMPHASIZES THAT THE INFLUENCE OF THE FEAR FACTOR ON PUBLIC PERCEPTIONS AND THE ROLE OF FEAR ON SAFETY, SECURITY AND DECISION-MAKING CONSTITUTE IMPORTANT ASPECTS OF THE ISSUES THAT ARE UNDER-INVESTIGATED IN AUSTRALIA AS ELSEWHERE AND THAT RESEARCH IS BEING CONDUCTED INTO DETERMINING WHETHER FEAR CAN BE USED BY JURISDICTIONS (THROUGH MEDIA, ETC.) TO ENCOURAGE A PROACTIVE CITIZENRY WITHOUT ITSELF HAVING THE SAME IMPACT AS TERRORIST ACTIVITY.

It is clear that 9/11 and subsequent terrorist-related events continue to send shock waves throughout the global community resulting in constant calls for political, judicial, and other responses. Australia has responded through an assortment of initiatives, some of which aim specifically at improving the effectiveness of investigating and controlling terrorist activity (McSherry 2005). A review of these responses and related research provides an interesting and informative overview of the Australian landscape regarding the battle against terrorism. Of particular note are the variety of efforts aimed at responding to terrorism at the global and domestic levels. Australia, like other countries, is certainly cognizant of the need to address the issues (raised by terrorism) from an international perspective that encourages information-sharing and bilateral or multilateral agreements, especially regarding proactive intelligence operations. In addition, Australia is also engaged in ensuring that the domestic response to this issue be well-informed and strategic, including efforts related to policing and community safety. It is worth noting that in addition to these global and domestic perspectives, there has been a concerted effort in Australia to empirically investigate the concept of fear within the context of terrorism and to identify the relationships between fear, community vigilance and the media. Some of the early work in this area is described below as well as commentary on potential extensions of these efforts.

AUSTRALIA & TERRORISM: THE GLOBAL PERSPECTIVE

There is a recognition in Australia that terrorism must be viewed through a global lens because innovations in technology, transborder agreements, and regional partnerships have culminated in a world view that differs substantially from that of previous generations. Given that the world is becoming ever-increasingly smaller due to these innovations, responses to challenges such as terrorism should be informed by international cooperation and cross-jurisdictional research. Interestingly, a review of Australian international initiatives and research indicates at least two significant and important trends. First, there is the recognition that although broad international participation is important, the establishment and continued development of initiatives with Asian-Pacific jurisdictions is especially important. The 2002 bombings in Bali and other terrorist acts have served to underscore the importance of maintaining high levels of cooperation between Australian investigative agencies and their Asian-Pacific counterparts (Pathé et al. 2015). A second interesting trend is the recognition of the need for evidence-based direction regarding how the links between Australia and various Middle-Eastern jurisdictions such as Lebanon might inform policing and other responsive strategies (Harris-Hogan, & Zammit 2014). Although there is some indication that in-roads have begun to be made regarding this aspect of the fight against terrorism, there is a clear need for continued research and bilateral cooperation on a variety of issues including the involvement of Australian foreign fighters in the Middle East and the radicalization of individuals in Australia.

AUSTRALIA & TERRORISM: THE DOMESTIC PERSPECTIVE

In addition to the international initiatives described above, Australia has also responded more locally to the threat of terrorism through a variety of policing and investigative measures. A review of the evidence suggests that there has been a concerted effort on a few fronts to increase both the knowledge-base and scope of policing practices to incorporate the most effective approaches to dealing with terrorism. First, several initiatives instituted aim at gaining an accurate assessment of the domestic threat-level regarding terrorist activity. A variety of sources related to this issue have been identified, including the development and implementation of agencies specifically assessing threat (see Pathé et al. 2015) and the deconstruction of individual case studies to gain additional insight into the potential dangers posed by individuals (see Porter & Kebbell 2011).

A second area that has received attention revolves around the application of existing psychological and policing models to the issue of domestic terrorism. For example, Dunn et al. (2016), suggest that community policing models may provide an effective avenue for counter-terrorism due to the emphasis on community engagement. At the more individualistic level, Wilson (2008) argues that police investigations of terrorist activity may be enhanced through the incorporation of psychological profiling since terrorist dogma is often enmeshed in an individual's thoughts, beliefs, and attitudes. Finally, there is also some indication that effort has been expended on trying to proactively identify specific aspects of the Australian context that may be susceptible to terrorist attack (e.g., agro terrorism) and working toward ensuring they are protected (Ungerer & Rogers 2006).

PUBLIC PERCEPTIONS OF TERRORISM IN AUSTRALIA

Although it may be argued that many of the above terrorism-related issues are like those identified in other countries, one area that appears to be receiving a significant amount of empirical and practical interest in Australia centres on public perceptions of terrorism and the fear that these perceptions cause. This is not surprising given that the primary goal of terrorist activity is to create and encourage public fear. Like other countries, Australia has recognized the role that fear may play in perceptions of safety and peace of mind and has begun to empirically document the impact of terrorist activity on the public. Page (2009), for example, examined the degree to which terrorism is related to Australian attitudes toward government initiatives and individual rights. Other researchers have begun to examine the degree to which these public perceptions compare internationally in terms of a variety of issues such as public confidence with border security as well as attitudes toward national and individual security (see Winterdyk & Sundberg 2010). It seems that terrorism has begun to shape the perceptions of Australians similarly as in other countries such as Canada, the United States and the United Kingdom. Interestingly however, in addition to simply documenting the impact of terrorism on public perceptions, Australia is also attempting to gain a deeper understanding of the psychological, sociological and political underpinnings of these perceptions, especially with regard to fear. Although much of the Australian discourse regarding terrorism revolves around public perceptions, there is a clear focus on the role of fear, including assessments of the causal factors. Some individuals, for example, suggest that the concept of terrorism-based fear may be politically driven and employed by some as a strategy related to issues such as public confidence and public support. Winter (2007), for example, argues that references to terrorist activity by the government of former Prime Minister John Howard were part of a strategic approach to increasing public support for national security issues. This suggestion appears to be supported by an empirical analysis of Prime Minister Howard's speeches following specific terrorist activities indicates a clear trend towards levels of fear-inducing content (De Castella, McGarty, & Musgrove 2009).

In addition to suggestions that terrorism-based fear may be politically linked, yet others have indicated that the media has also begun to play a significant role in moulding public perceptions of safety. Specific examples include claims that Australian media representations of terrorist activities include a disproportionate focus on ethnicity-related aspects and thus contribute to a bias in perceptions of crime, fear and victimization, especially regarding immigrants (Collins 2007). Others have gone so far as to argue that media outlets have attempted to manipulate public views of terrorism through reports which draw parallels with sport.

FEAR AND TERRORISM IN AUSTRALIA: WHERE TO FROM HERE?

It appears that although the Australian responses to the threat of terrorism may be perceived as similar to that of other countries, there is an identifiable and distinct interest revolving around the issue of fear and its potential inclusion as part of a domestic strategy to enhance vigilance. As many of the authors referenced in this article have suggested, one of the core aspects of terrorism is the instillation of fear among the public and as such it is not surprising that entities such as politicians and the media have been identified as potentially impacting public fear levels for various reasons. If this is indeed the situation, it leads to an interesting question regarding the public manipulation of fear and how it may relate to terrorism, especially given the need for people to be vigilant and proactive. For example, there is currently a litany of media advertisements throughout Australia encouraging residents to be attentive to any potential indicators of terrorist activity and to ensure that these observations are reported to the authorities in order to safeguard community wellbeing.

One possible extension of the above is research into how fear may be effectively employed as a mechanism for increasing public awareness of potential terrorist activity without causing widespread panic. The question would hinge on how Australia (and other countries) might harness terrorism-based fear through the media and other avenues in a way that encourages proactive vigilance without increasing the overall level of fear to the degree that it meets the objectives of terrorist activity. Simply put, it raises the question of whether one of the core objectives of terrorism (fear) can be positively employed as a means of increasing community participation in counter-terrorism behaviours.

The starting point for answering the above question may lie in research already conducted within the fields of criminology, forensic psychology and policing with regard to the issue of fear of crime. Both academics and police services have long recognized the need to empirically understand the delicate balance between ensuring that the public is alert and aware of potential criminal victimization without leading to a state of terror and anxiety. An extensive amount of research has been conducted in order to assist police and other public agencies to try and attain this balance through the use of effective media campaigns, educational programs, and community policing initiatives. For example, it has been argued that the most effective public anti-crime initiatives are those based on the well-known Yerkes-Dodson model which suggests that a moderate level of victimization fear is the optimum goal for ensuring vigilance without worsening perceptions about crime levels. While these findings are informative, it may be argued that there is still a need for additional research and investigation as to whether these findings can be applied to the issue of terrorism. Perhaps future research will assist in enlightening us on this question.••

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RÉSUMÉ : TERRORISM IN AUSTRALIA: RESEARCH, RESPONSES AND FUTURE DIRECTIONS

PAR JEFFREY E. PFEIFER

Pfeifer parle des efforts déployés par l'Australie en vue d'élaborer une réponse bien informée et stratégique fondée sur la coopération internationale et les recherches menées entre diverses sphères de compétence ; il traite aussi dedeux tendances importantes à cet égard : certaines initiatives des compétence de l'Asie-Pacifique ainsi que certaines orientations fondées sur des données probantes dans le but de régler les rapports entre l'Australie et diverses pays du Moyen-Orient. Sur le plan intérieur, Pfeifer s'intéresse à l'étendue des pratiques policières et à la base des connaissances sur lesquelles elles s'appuient : (1) en créant des organismes voués spécifiquement à l'évaluation des menaces (cf., p. ex., Pathé et coll., 2015) et au recours à des études de cas pour mettre en relief les dangers potentiels que présentent certaines personnes (cf., p. ex., 2010/Porter et Kebbell, 2011) ; (2) en appliquant les approches psychologiques et policières existantes au problème du terrorisme intérieur par le truchement des approches de police communautaire (Dunn et coll., 2016) et le recours au profilage psychologique (Wilson, 2008); (3) en essayant de manière proactive de repérer et de protéger certaines cibles potentielles contre des attaques terroristes (p. ex., l'agro-terrorisme) (Ungerer et Rogers, 2006). Pfeifer met en relief l'influence de la peur sur les perceptions de la population, de même que sur la sécurité et le processus de prise des décisions, des aspects importants du problème faisant pas l'objet d'enquêtes insuffisantes en Australie comme ailleurs dans le monde. Il indique aussi que des études sont menées pour établir si la peur pourrait être utilisée par diverses sphères de compétence (au moyen des médias ou autre) pour inciter les citoyens à être proactifs, sans que celle-ci ait le même impact que des activités terroristes.

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POLICE
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MATERIAL SUPPORT OF TERRORISM

BY ERIK LUNA
Amelia D. Lewis Professor of Constitutional & Criminal Law, Arizona State University, Sandra Day O'Connor College of Law[1]

- SUMMARY -

THIS ARTICLE PONDERS U.S. LAWS THAT CRIMINALIZE THE "MATERIAL SUPPORT" OF TERRORISM. POSITING THAT MATERIAL SUPPORT PROVISIONS REPRESENT A MOVEMENT AWAY FROM REACTIVE TO PROACTIVE COUNTERTERRORISM POLICY, LUNA FOCUSES ON A STATUTE IN THE U.S. CODE WHICH CRIMINALIZES THE PROVISION OF MATERIAL SUPPORT TO A FOREIGN TERRORIST ORGANIZATION. LUNA EMPHASIZES THAT THE DESIGNATION OF ORGANIZATIONS AS TERRORIST AND THE LISTING OF CERTAIN THINGS AS MATERIAL SUPPORT HAS RAISED DIFFICULT CONSTITUTIONAL QUESTIONS. AS LUNA NOTES, HOWEVER, THE U.S. SUPREME COURT HAS UPHELD THE STATUTE AND, INDEED, CANADA HAS ADOPTED A SOMEWHAT SIMILAR SCHEME FOR IDENTIFYING TERRORIST GROUPS. IN THIS WAY, BOTH NATIONS DEVIATE FROM THE IDEA OF UNIVERSALITY OF CRIMINAL LAW BY LISTING GROUPS AS ENEMIES OF THE STATE. ALTHOUGH THIS MAY BE JUSTIFIABLE IN OUR POST-9/11 WORLD, LUNA WARNS THAT WE MUST NOT FORGET THE EXTRAORDINARY NATURE OF ASSOCIATIONAL GUILT IN A LIBERAL CONSTITUTIONAL DEMOCRACY.

In the wake of the terrorist attacks of September 11, 2001 (9/11), the U.S. government adopted a series of exceptional measures in the new "war on terror." Much of this controversial legislation and executive action is well known around the world, including allegations of ethnic and religious profiling and surveillance; extended, incommunicado detention and secret proceedings in immigration cases; torture qua "enhanced interrogation techniques" such as water boarding; extraordinary rendition of detainees to foreign nations known for human rights abuses; mass wiretapping and data collection by the National Security Agency; the ongoing maintenance of a quasi-penal colony in Guantánamo Bay, Cuba; and extrajudicial targeted killings abroad. Each of these topics have been explored at length, not only by American scholars but also by commentators from around the world.

Lesser known outside of the United States are the principal substantive laws used by the government to prosecute terrorism cases in U.S. courts. The relevant scheme, which criminalizes various forms of material support to terrorism, actually dates back to legislation passed some two decades ago.[2] It was only after 9/11, however, that the potential power of material support became apparent.

TERRORISM PREVENTION AND MATERIAL SUPPORT

Traditionally, U.S. officials have followed a reactive model of law enforcement, seeking information after an incident to determine whether a crime has occurred and, if so, the relevant facts and circumstances. Consistent with this approach, investigators traced backward from the 9/11 attacks to find those who provided financial support or other assistance and thus participated in the larger plot. In the modern era of terrorism, however, investigations and prosecutions of completed acts of political violence are considered necessary but insufficient. Contemporary counterterrorism efforts have demonstrated a shift in emphasis toward prevention and proactive investigation. In fact, within days of 9/11, federal agents were instructed *to use every available law enforcement tool to incapacitate suspicious individuals*.

Today, prosecutors rely heavily upon inchoate offenses such as conspiracy and crimes of acts of assistance or encouragement, in order to disrupt terrorist organizations and plots and thus intervene before any violence occurs. For these purposes, the most important U.S. laws are those involving the concept of "material support," which prohibits interactions with terrorists and terrorist organizations. Provisions in U.S. law not only dictate a response to acts, or threats, of violence but also attempt to cut off the supply of goods and services necessary for terrorists and terrorist organizations to attain their criminal objectives. Often used in conjunction with conspiracy law, these precursor offenses allow intervention at an early stage in the criminal timeline, providing mechanisms to intercede in terrorist planning before an attack occurs.

Although some material support provisions are infrequently used, charges of providing material support to terrorists (18 U.S.C. § 2339A) and to foreign terrorist organizations (18 U.S.C. § 2339B) are now laid in the majority of terrorism-related cases and often serve as the fulcrum of the Justice Department's counterterrorism efforts. The material support provisions carry stiff sentences even when they do not result in physical harm to individuals.

Under § 2339A, it is a crime to provide material support "knowing or intending that [the resources] are to be used in preparation for, or in carrying out, a violation" of any one of more than forty predicate terrorism offenses. Section 2339A thus criminalizes behavior only if it was made with knowledge that it will support a violent act. By contrast, § 2339B punishes anyone who "knowingly provides material support or resources to a foreign terrorist organization." This wording was rather unclear as to the *mens rea* requirement. After several court cases and statutory amendments, however, § 2339B is now understood as criminalizing support provided either with knowledge of a group's

designation as a foreign terrorist organization (FTO) or with knowledge that the group is, or has engaged, in "terrorism" or "terrorist activity" as defined by statute.

One way to think of the two statutes, and to differentiate them, is that § 2339A designates terrorist *crimes* while § 2339B designates terrorist *organizations*. But while the terrorist crimes are explicitly listed in § 2339A, the executive branch is empowered to choose terrorist organizations that will trigger liability under §2339B. Specifically, the U.S. Secretary of State may designate a foreign organization as an FTO if she finds that the organization engages in terrorist activity, or it retains the capability and intent to engage in terrorist activity, and thereby threatens the safety and/or national security of its' citizens.

In several cases, defendants prosecuted under § 2339B have challenged the designation of organizations to which they allegedly provided support. Indeed, one might think that someone facing years in prison would be able to litigate an FTO's designation, and yet the courts have uniformly rejected this argument. In a pointed dissent regarding one case, Judge Alex Kozinski chided his colleagues for refusing to consider whether the designated group was, in fact, a terrorist organization.[3] The defendant was being prosecuted "for giving money to an organization that no one other than some obscure mandarin in the bowels of the State Department had determined to be a terrorist organization," Judge Kozinski argued. "Under the Constitution, the State Department does not have carte blanche to label any organization it chooses a foreign terrorist organization and make a criminal out of anyone who donates money to it."

HUMANITARIAN LAW PROJECT (HLP) LITIGATION: CHALLENGING THE CONSTITUTIONALITY OF § 2339B

Aside from the legal questions concerning the designation of particular organizations, two basic arguments figure in most litigation about § 2339B: (1) support for political or humanitarian activities of a designated group is constitutionally protected; and (2) some of the items listed as material support are unconstitutionally vague. The first claim is premised on the freedom of expression and the right of association protected by the First Amendment to the U.S. Constitution, while the second claim is grounded in considerations of due process under the Fifth Amendment.

The seminal case on these issues was brought by, *inter alia*, the HLP, a human rights organization with consultative status to the United Nations and a frequent contributor at meetings of the UN Commission on Human Rights. The plaintiffs wanted to provide monetary contributions, other tangible aid, legal training, and political advocacy to support the lawful, non-violent goals of two FTOs: the Kurdistan Workers Party and the Liberation Tigers of Tamil Eelam. The plaintiffs alleged they did not do so, however, out of fear of being prosecuted under § 2339B.

The ensuing court decisions and statutory amendments generated a complicated litigation sequence. Ultimately, the U.S. Supreme Court (SC) upheld § 2339B against all challenges in its *HLP* decision.[4] Writing for the majority, Chief Justice John Roberts gave substantial deference to lawmakers and law enforcers consistent with the aforementioned movement toward preventative law enforcement. "The material-support statute is…, a preventive measure—it criminalizes not terrorist attacks themselves, but aid that makes the attacks more likely to occur," the *HLP* Court noted. "In this context, conclusions must often be based on informed judgment rather than concrete evidence, and that reality affects what we may reasonably insist on from the Government."

This deference to the government's judgment was evident throughout the majority opinion. The Fifth Amendment only demands that a statute provide fair notice of what is criminalized. In this case, the operative terms of material support did not require unfettered subjective judgments, particularly when applied to the plaintiffs' proposed activities. With regard to providing "training" as a form of material support, for instance, instruction on dispute resolution through international law would impart a "specific skill" (which is banned) rather than "general knowledge" (which is not). In giving "expert advice or assistance," the *HLP* Court said a person of ordinary intelligence would recognize that prohibited "specialized knowledge" is implicated in showing someone how to seek UN humanitarian relief. As for the unlawful provision of "personnel" and "service," both words refer to concerted activity and not independent advocacy. The term "personnel" was limited to providing someone to work for an FTO or to direct its operations, specifically excluding independent advocacy. Similarly, the word "service" is usually defined as the performance of an act commanded or paid for by another, not an independent act.

Rejecting the positions taken by the parties, the *HLP* Court refined the freedom of expression question under the First Amendment to whether the government may prohibit the plaintiffs from providing material support to FTOs in the form of speech. According to the *HLP* Court, the political branches were justified in concluding that any contribution to an FTO will abet terrorist activity.

Consistent with the aphorism "money is fungible," material support always has value because it frees up resources that an FTO can use for unlawful ends. The *HLP* Court also believed that the provision of material support can lend legitimacy to an FTO, which then facilitates the group's existence, its ability to recruit members and raise funds, and, ultimately, its capacity to engage in more terrorist attacks. Moreover, allowing material support to be provided to FTOs could strain American relationships with its allies and undermine international cooperation to prevent terrorism.

With these concerns in mind, § 2339B was upheld as applicable to the type of activities the plaintiffs wanted to pursue. The *HLP* Court argued that the plaintiffs' desire to train FTO members in peaceful dispute resolution could nonetheless advance the illegitimate aims of the organization by "buying time to recover from short-term setbacks, lulling opponents into complacency, and ultimately preparing for renewed attacks." Finally, the *HLP* Court made quick work of the freedom of association claim under the First Amendment. "The statute does not penalize mere association with a foreign terrorist organization," nor does it ban being a member of an FTO or promoting the group's political goals. According to the Court, the law only prohibits the act of providing material support.

In a dissent joined by Justices Ruth Bader Ginsburg and Sonia Sotomayor, Justice Stephen Breyer rejected the alleged distinction between independent and coordinated advocacy, given that the First Amendment protects both speech and association. Moreover, the dissent argued that the concept of fungibility had been stretched beyond constitutional limits. Likewise, the legitimation argument had "no natural stopping point," being equally applicable to independent advocacy of an FTO's goals or to constitutionally protected group membership. As for concerns about international cooperation, "the fact that other nations may like us less for granting [First Amendment] protection cannot in and of itself carry the day." The dissent would have interpreted the statute to require a heightened *mens rea* of specific intent to assist in an FTO's terrorist activities.

CONCLUDING THOUGHTS

Material support can be viewed as an offspring of the prohibition on "trading with the enemy," which itself was an extension of the law of treason. And those convicted of providing material support represented threats to U.S. national security interests, often through their attempted or actual assistance to dreadful organizations, some of which are avowed enemies of the United States (e.g., Al Qaeda and ISIS). Moreover, most of the defendants harbored highly illiberal and usually despicable beliefs, demonstrated by evidence presented at their respective trials.

The extent to which criminalizing material support prevents terrorist attacks, however, depends on the validity of the underlying claims about an organization and the quality and quantity of support provided by a given defendant. Such issues are not always black and white, as when an organization lobbies U.S. government officials for its removal from the list of designated FTOs. As I understand the issue, Canada has adopted a scheme for listing terrorist groups that is somewhat similar to the approach taken in the United States.[5] Both nations thus deviate from "the universality of criminal laws which are typically aimed at all persons living within the jurisdiction," by instead labeling "the listed group or individual as a type of 'enemy' or 'outlaw.'"[6] Maybe this is justifiable in our post-9/11 world, but we should not forget the extraordinary nature of associational guilt in a liberal constitutional democracy.

As a matter of substantive criminal law, the limits of material support have yet to be delineated. Would a cab driver be guilty of providing material support by driving a FTO member to the United Nations, knowing that the person is a member of a FTO or that his/her organization had been involved in terrorism? How about someone who allows an FTO member to spend the night at their home, or cashes a check for the member, or loans the member a cell phone for use during the stay, or allows the member to use a fax machine or laptop computer? Under the SC's decision in *HLP*, these and related questions are irrelevant hypotheticals unless a prosecutor brings charges against an offending cab driver, for instance. Until then, the potential scope of the material support scheme remains to be determined.

Unlike its American counterpart, the Supreme Court of Canada has restricted the compass of criminal liability for contributing to the activities of a terrorist group.[7] By interpreting the statutory provisions as requiring a *mens rea* to enhance the abilities of a terrorist group to facilitate or carry out a terrorist activity, the SC ruled out the possibility that a lawyer representing an alleged terrorist might be held criminally liable because she "may know that, if successful at trial, his client will thereafter pursue his contributions to terrorism," even though he was "simply affording his client a full defence at law." Likewise, the relevant *actus reus* "does not capture conduct that discloses, at most, a negligible risk of enhancing the abilities of a terrorist group to facilitate or carry out a terrorist activity." As an example, the SC opined that "the conduct of a restaurant owner who cooks a single meal for a known terrorist is not of a nature to materially enhance the abilities of a terrorist group to facilitate or carry out a terrorist activity." By contrast, the Court suggested that providing flight lessons to members of a terrorist group would obviously enhance the group's abilities to commit acts of terrorism.

Ultimately, the parade of 'horribles' sometimes offered against the U.S. material support scheme may never happen. Conversely, the Canadian Supreme Court's willingness to address hypothetical cases may someday discourage the government from charging a terrorism case as it should. Nonetheless, the effort to distinguish clearly what is protected and what is criminal has value to those concerned about the new post-9/11 balance between liberty and security.••

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1. Much of the following text is drawn from books co-authored with Professor Wayne McCormack. *See* ERIK LUNA & WAYNE MCCORMACK, THE LAW OF TERRORISM (Carolina Academic Press, forthcoming 2016); ERIK LUNA & WAYNE MCCORMACK, UNDERSTANDING THE LAW OF TERRORISM (LexisNexis, 2014).

2. *See Antiterrorism and Effective Death Penalty Act*, Pub. L. No. 104–132, Title III, § 303(a), 110 Stat. 1214, 1250 (1996) (adding 18 U.S.C. § 2339B); Violent Crime Control and Law Enforcement Act, Pub. L. No. 103–322, Title XII, § 120005(a), 108 Stat. 1796, 2022 (1994) (adding 18 U.S.C. § 2339A).

3. *See United States v. Afshari*, 446 F. 3d 915 (2006) (Kozinski, J., dissenting from denial of rehearing en banc).

4. *See Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010).

5. See Criminal Code of Canada, R.S.C., ch. C-41, §83.05.

6. Kent Roach, *Be Careful of What You Wish For? Terrorism Prosecutions in Post-9/11 Canada*, 40 QUEEN'S L.J. 99, 129 (2014).

7. *See R. v. Khawaja*, 2012 SCC 69, [2012] 3 SCR 555 (interpreting § 83.18 of the Canadian Criminal Code).

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RÉSUMÉ : MATERIAL SUPPORT OF TERRORISM

PAR ERIK LUNA

Amelia D. Lewis Professor of Constitutional & Criminal Law, Arizona State University, Sandra Day O'Connor College of Law

Erik Luna réfléchit ici aux lois américaines qui criminalisent le soutien matériel au terrorisme. Postulant que les dispositions relatives au soutien matériel constituent un mouvement passant des politiques réactives à des politiques proactives en matière de terrorisme, Luna met l'accent sur un statut des lois américaines, qui criminalise le soutien matériel à une organisation terroriste étrangère. Il fait ressortir que la désignation d'organisations comme terroristes et le fait de définir certains éléments comme un soutien matériel ont soulevé des questions difficiles sur le plan constitutionnel. Luna souligne toutefois que la Cour suprême des États-Unis a maintenu la validité du Statut et, de fait, le Canada a adopté une approche sensiblement la même pour identifier les groupes terroristes. Ainsi, l'un et l'autre pays s'écartent du principe de l'universalité du droit criminel en identifiant certains groupes comme ennemis de l'État. Bien que cela puisse être justifiable dans notre monde vivant à l'ère des événements du 11 septembre, Luna nous met en garde qu'il ne faut pas oublier la nature extraordinaire de la culpabilité par association dans une démocratie constitutionnelle libérale.

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TERRORISM: A REFLECTION ON THE PERSPECTIVE OF INDIAN POLICE[1]

BY STHITA PRAJNA MOHANTY
Doctoral candidate, KIIT School of Law, Bhubaneswar, India

- SUMMARY -
LAW STUDENT STHITA PRAJNA MOHANTY SUGGESTS THAT A LACK OF PUBLIC AWARENESS, RESPONSE MECHANISMS, AND MODERNIZATION COMBINE WITH OTHERWISE OUTMODED POLICY TO RENDER INDIAN POLICE EFFORTS NULL IN THE FACE OF TERRORISM AND THAT NEW APPROACHES SUCH AS COMMUNITY POLICING MUST BE EMBRACED. MOHANTY ADVOCATES A COMPLETE OVERHAUL OF THE COLONIAL-BASED INDIAN LAW ENFORCEMENT GOVERNANCE AND THE CREATION OF MECHANISMS AND PRACTICES THAT WILL FOSTER A POSITIVE CONNECTION BETWEEN CITIZEN AND STATE AT THE LOCAL LEVEL IN ORDER TO MORE EFFECTIVELY COMBAT POTENTIAL ACTS OF TERRORISM.

India has been witness to an endless number of terrorist incidents since gaining independence in 1947. The most visible challenge and disappointing aspect of India's effort to combat terrorism has been the relative inability of Indian law enforcement to effectively enforce rule of law and maintain order. This is seen to be largely due to poor and antiquated police practices which have compromised the potential for effective and efficient law enforcement governance practices. Most of these challenges and limitations have simply gone unaddressed in the 70 years since independence.

As a result, the Indian police are finding it difficult to effectively meet the challenges of the increasing incidents of terrorism in many parts of the country (see Chakraborty & Dube in the *Justice Report*, 31.4). These challenges are compounded in part by the fact that the Indian police lack modern technology, weapons and other mechanisms also needed to effectively combat terrorism. Although India has a large heterogeneous and sovereign democracy, its ability to effectively combat terrorism is further complicated by the fact that the country is bordered by several countries who are experiencing their own law enforcement challenges, including acts of terrorism – in particular Pakistan. To date, India's efforts to combat terrorism have produced mixed results because the Indian police, despite an outward appearance of being a significant element of the criminal justice system, lack the necessary organization, modernization, and professionalism to effectively address the evolving nature of terrorism in India. In order to move forward, policing in India is in need of a major overhaul. For example, Indian policing must begin to embrace contemporary methods of policing practices, such as "*Community Policing*" (CP) and "*Intelligence-led Policing*" (ILP), as adopted by some of the most developed police communities abroad and espoused in particular by such scholars at Mark Riebling (Kiran 2013).

Two other issues which conflate efforts of the Indian police to combat terrorism are: (1)the lack of a clear definition of what is meant by terrorism and (2) the lack of valid and reliable data. Therefore, it is difficult to know whether terrorism has changed the character of policing in India, particularly in relation to prevention and intelligence gathering. The central point of the ILP model is identification, analysis, and supervision of existing and approaching terror threats. In beginning to use the CP model, the Indian Police Services has begun to undertake another approach to traditional policing to manage the post 9/11 international campaign known as the *War on Terror* era. Under this new approach the CP model can be effective at the local level, and police are considering it as a new method for addressing the challenges of terrorism.

In using CP approaches, police have begun realizing that the primary method to countering terrorism is to develop new strategies that would reignite positive connections between citizen and state. According to Sevinc and Guler (2016), the CP approach appears to be having a deterrent impact on the operations of various terrorist organisations. The CP model creates optimism and serves to foster a healthy relationship between police and citizens who are trying to mobilize themselves against terrorism.

Unfortunately, the Indian police continue to be plagued by the former colonial practices and consequently are relying on archaic methods and training introduced by their former British colonizers. Although almost 70 years have passed since gaining independence, there have been no concerted efforts to update/reform policing in India—in spite of repeated pleas to India's Apex (Supreme) Court. The role of local police is undoubtedly of pivotal importance in trying to keep terrorism at bay, but the absence of public awareness and response systems creates significant hurdles in police efforts to effectively prevent/combat any act of terrorism. The lack of modernization and proper reforms in law enforcement operations and governance have also allowed terrorism to flourish. What is called for is an abatement of political interference and nepotism, the introduction of informed legislation reforms, as well as the effective implementation of policing methods and policy such as community-oriented policing.••

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1. PhD candidate. This article is informed in part by the author’s PhD dissertation, which is being finalized.

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RÉSUMÉ : TERRORISM: A REFLECTION ON THE PERSPECTIVE OF INDIAN POLICE

PAR STHITA PRAJNA MOHANTY

Doctorant, KIIT School of Law, Bhubaneswar, India

Sthita Prajna Mohany, étudiant en droit, suggère que le manque de sensibilisation du public, les mécanismes de réaction et la modernisation se combinent à d'autres politiques dépassées pour invalider les efforts de la police indienne face au terrorisme et qu'il faut selon lui mettre en place de nouvelles approches, telles que la police communautaire. Mohanty préconise une refonte complète de la gouvernance des forces de l'ordre indienne fondées sur le colonialisme et la mise en place de mécanismes et des pratiques susciteront des rapports positifs entre les citoyens et l'État au niveau local dans le but de contrer plus efficacement les actions terroristes.

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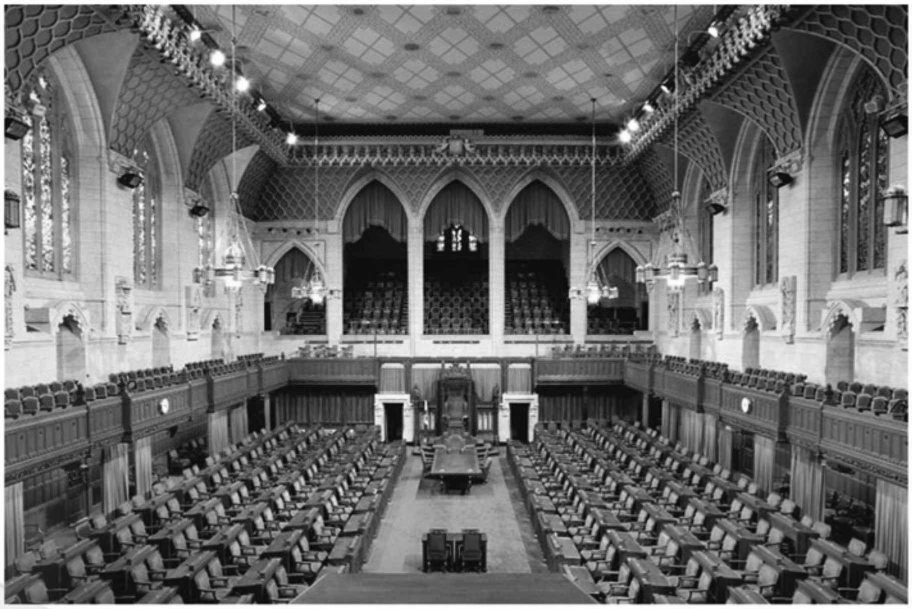

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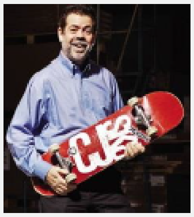

Quand il était un jeune adulte, Jay Mandarino a fait face à de nombreux défis. Il a fait des tentatives de suicide à 8 ans et à 9 ans parce qu'il souffrait d'une faible estime de soi et de difficultés d'apprentissage, d'un TDAH et de dyslexie. Jay a créé le parc et école de planche à roulettes C.J., un établissement sans but lucratif, pour aider des jeunes à surmonter leurs propres difficultés et à acquérir une meilleure estime de soi et de l'assurance, et pour promouvoir la participation communautaire et les comportements prosociaux.

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The Robb Nash Project

Robb Nash recently in the news for having tattoos of first 120 youth that have promised to not commit suicide, has shared his incredible story with thousands of young people, performing in schools, indigenous communities and detention and custody centres across Canada. Through Robb's songs and stories, hear what this Lead Singer of a Canadian Top 40 Rock band discovered through a horrific car accident that left him dead at the scene, and how he has used that experience to help young people discover purpose and meaning in life.

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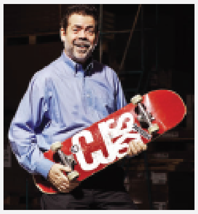

Jay Mandarino as a young adult faced many challenges including attempted suicide at ages 8 and 9 as a result of poor self esteem and learning disabilities, ADHD, dyslexia. Jay developed CJ Skateboard Park and school, a Not-For-Profit facility, to help young people overcome their own challenges to foster a better sense of self-esteem and confidence in themselves and to promote community involvement and pro-social behaviours.

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